UNIFICATION OF NATIONAL LAWS IN THE CONTEXT OF ECONOMIC GLOBALIZATION

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Abstracts: *The article examines unification of national laws in the sphere of economics and finance context of globalization. The modern era - an era of globalization, which includes the highly dynamic development of integration processes in various areas of activity of the state. Globalization is an objective the emergence of supra-national / transnational elements of legal regulation. More and more questions of domestic jurisdiction transferred to the states under the international legal regulation. Therefore, considering the legal regulation of relations in the sphere of economics and finance in the modern period, we can not ignore world integration processes as a result of globalization.*

Key words*: economy, finance, banking, international law, international rules-principles, globalization, global economic space, unification of the law. integration, agreement.*

The modern epoch - this is the epoch of globalization, which includes the highly dynamic development of integration processes in various areas of the state.

With the globalization of national economies to integrate into a united planetary space with a universal system of economic institutions and the interaction of markets. In our view, globalization is a process of erasing the boundaries not only economic between states, but also the national jurisdictional boundaries.

Legal aspect of globalization is manifested in our opinion, primarily in the fact that more and more questions of domestic jurisdiction transferred to the State at a supranational regulation and, as a consequence, increase the number of international treaties governing relations in various areas of the state. Formation of a global economic space – the most important aspect, intensifies the process of erasing the borders of national jurisdictions.

Therefore, considering the legal regulation of relations in the economic and financial segments of the activities of states in the modern period, we can not ignore the world integration processes in the globalization process, which leads to the creation of a holistic legislation, following a single legal logic and requires consideration of both the neoliberal global trends and diverse nature of national legal systems.

Globalization is an objective appearance of supranational / transnational elements of legal regulation, strengthening in law is the role of the international integration aspects.

In the development of law in the context of globalization are the following main trends of its development, primarily:

– first of all – the trend towards unification of the law, which manifests itself in an effort to develop a common, comprehensive approach to law, means the introduction into the legal systems of the states the uniform, unified the rules of law;

– secondly – this application for legal regulation of international norms-principles laid down in them with legal ideas: general legal principles (principles of equality, justice, humanity, and others.), as well as the principles enshrined at internationally- legal acts. In the

context of economic globalization, namely international norms-principles play an increasingly active role in system of legal regulatory means in various segments of management of economy and finance by the state. Norms- principles, which differ from the usual rules of law much higher level of generalization, namely in terms of integration of the economies of performing regulatory functions of the legal effect on relationships in various segments of public life of state. In the context of economic globalization trend towards more widespread formation and greater use of international norms-principles of law as regulators in the area of economic and financial relations. These relationships, in particular, should include the relationship between the state and transnational corporations, mediated via norms-principles of partnership and cooperation in solving common economic problems that play an active role in the system of legal regulatory means used at the global and regional levels.

In third – law in the context of globalization is becoming more complex system and provide all the legal acts is impossible, so inevitably, the role of the judicial practice – judicial precedent in solution of issues related with the legal regulation of economic and financial relations.

Thus, it should be noted that the science of international law and treaty practice in regard to the universally recognized norms- principles of international law based on fact that is a single imperative principle of faithful observance of international obligations (for international contracts, it is called as the principle of „pacta sunt servanda".

Understanding the principles of international law allows to simplify the integration process of the legal regulation of relations in the sphere of economics and finance in the context of economic globalization, including the conclusion of contracts, determination the conditions of their execution and rapid resolution of any dispute between the parties. The complex regulations and rules governing the process of signing and execution of international commercial contracts, his institute legal regulation of international trade, or Lex mercatoria.

So back in the 90s. twentieth century, there have been several legal documents are clearly stated norms-principles of international trade, recognized by the parties international trade as the rules of law, acting in this segment of the world economy.

It also allows them to be used as the international legal acts of arbitration for the resolution of specific disputes:

– The UNIDROIT Principles for International Commercial Contracts, 1994 г. [3];

– The Principles of European Contract Law, as amended by 2003 г. [4, 6];

– A set of principles, rules and standards Lex mercatoria (CENTRAL), as amended by 2003 г. [1, 2].

The UNIDROIT Principles were prepared by an intergovernmental organization – International Institute for the Unification of Private Law (UNIDROIT) and published in 1994. The document is not an international agreement, but because of the credibility of the organization that produced it, quite often used in the preparation of international contracts and the resolution of international commercial disputes. Principles of European Contract Law developed within the European Union for the purposes of Eropean legal integration.

The set of principles, rules and standards Lex mercatoria was developed in the framework of the project Centre for Transnational Law (CENTRAL).

International norms-principles regulated in the above documents are universal, thus, their use does not affect characteristics of the national law of the participants of contractual

relations, and that is why they are used in international arbitration in resolving foreign trade disputes [5]. This law-making process is being developed, there is a constant revision of norms- principles because of the need to respond to the constant changes in the structure of international commercial transactions, and as a result, create more and more rational norms that meet modern, constantly changing conditions of international foreign trade turnover.

Modern legal regulation of international trade overcome the „legal order of the many of national legal systems" [5.C.259], slows the development of Lex mercatoria.The processes of globalization have had a positive influence on the formation of the modern legal regulation of international trade, so that it has acquired: 1) universal character; 2) flexibility and the possibility of dynamic growth; 3) informal character and rapid development; 4) reliance on trade customs and practice.

A complex of rules that make up Lex mercatoria and ensuring the regulation of international trade is quite extensive and includes, in our opinion, the following: general principles of law, norms-principles documents of international organizations, broadly defined customs and usages of international trade, arbitration awards, international conventions, model laws of the international legal character, etc.

It is in Lex mercatoria were reflected current trends in the development of law to regulate the international economic (mainly trade) relations with the ever-growing dynamics of global economic relations and some delay the development of national legislation to ensure their regulation. In the context of globalization, the creation of a united economic space exactly Lex mercatoria provides necessary regulation of international trade transactions, removing certain contradiction international nature of such transactions, and their regulation by national law, and allows to exclude the transaction expenses, associated with the application of national law to transnational trade relations, which may hinder the development of the global market.

Major sectors of the world economy, following the rapid development of world trade, especially e-commerce, have become global. As this trend affects the country's trade balance and consequently on the living standards and welfare of population countries, need for an integrated legal regulation in the sphere of standardization as an important component in the foreign economic activity of the state in the global market has increased sharply. Increase in these conditions, the role of international standardization in the development of the national economy has become truly planetary character due to the ever increasing competition of national economies as a result of economic globalization, which requires taking into account the provisions of international standards in the promotion of national products on the world market.

The last decade of the 20th century due to the revolutionary development of economic relations, establishing new international norms-principles of legal regulation, uniform mandatory legal regulatives standardization of products that have a direct effect, and a prohibition on the establishment of unilaterally limiting global trade, especially in relation to the formation of free trade zones.

Recognized on the basis of international standards of quality of national products at a competitive price has now become the purpose of the national economy.

At the basis of the practical implementation of unification legislation in the field of international standardization are international norms-principles, fixed in the Agreement on Technical Barriers to Trade **(**Marrakech, April 15, 1994):

– guarantee of transparency of procedure of standards' creation;

– established standards requirements should not create obstacles to the circulation of products in international trade.

Practical implementation of the unification legislation in the sphere of international standardization is determined by the requirements of the Agreement on Technical Barriers to Trade (Article 4 „Preparation, Adoption and Application of Standards", item 4.1), in accordance that „Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the "Code of Good Practice"). They shall take such reasonable measures as may be available to them to ensure that local government and nongovernmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this Code of Good Practice. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice. The obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice" [1]. Thus:

– National standards body shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia:* national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia:* available scientific and technical information, related processing technology or intended end-uses of products.

– When relevant international standards exist or their completion is imminent, National standards body shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

– Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other National standards bodies, National standards bodies shall:

1) publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other National standards bodies to become acquainted with it, that they propose to introduce a particular technical regulation;

2) notify other National standards bodies through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

3) upon request, provide to other National standards bodies particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

[1] http://www.wto.org/english/docs_e/legal_e/17-tbt.pdf

4) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

Over the past decade the high rates of innovation in financial markets and the internationalization of financial flows changed the face of banking almost beyond recognition. The traditional practice of banking, based on attracting deposits and granting loans, today is only part of the bank's activities, and often the least profitable. Modern banks have moved beyond traditional loan and deposit operations and establish a presence in almost every segment of the financial system.

The innovation process has led to an increase in the diversity of financial instruments, which markets are constantly expanding. Today, new, based on the information technology types of banking activities are the main sources of banks' profitability. The use of financial innovations: asset securitization, widely used „off-balance" financial instruments such as futures, options, guarantees and letters of credit, not only is a high-risk activity in the banking, but also fraught with complex problems of managing emerging risks and, as a consequence, the corresponding segments of the financial market is very unstable. The consequences of financial instability are great and express as a slowing of economic growth, and the destruction of public confidence in financial markets. What we are witnessing now.

Today, due to the globalization of the economy as a whole, including the internationalization of financial flows and embedding innovation in the financial markets, the fundamental problem in banking is that on the one side, adequate freedom of banks in decision-making under changes in conditions of market activity allows them to compensate the races of conjuncture in the financial markets, but on the other – the concentration of banking risks as a result of banking activity leads to increased instability of the banking sector as a whole and its main constituents - banks. Correlation between different types of risk, both within the individual bank and the scale of the banking system increased by orders of magnitude and has become more complex. Legal regulation of banks in a competitive and volatile market has become extremely complex process.

States cooperate with a view to the creation, development and application of necessary international-legal norms-principles, guiding relations affecting the basic factors of financial stability and solvency of financial market participants, such as: adequate own capital; presence in the property available assets; formation of reserve funds; allocation of money reserve funds in "covering" assets; ensuring regulatory ratio between assets and liabilities (solvency margin); management systems of international accounting and reporting; implementation of investment activities; financial control; limitation of a single risk; tariff policy.

All this throws challenge traditional approaches to legal regulation of banking and requires comprehensive implementation of the Basel process ideas[2] in the legal area – application of unified legal regulators of banking: Basel international norms-principles.

[2] Basel Committee on Banking Supervision Committee as the national banking supervisors was established in 1975. The Committee consists of the heads of the authorized banking supervision and central banks of Belgium, the UK, Germany, Italy, Japan, Luxembourg, Netherlands, USA, Switzerland, Sweden. The Committee secretariat is based in Basel (Switzerland) at the Bank for International Settlements. Practical work is carried out by a working group consisting of representatives of the Secretariat of the Committee of Banking Supervisors and a number of developed and developing countries. The Basel Committee on Banking Supervision are regional groups, the main task of which is to promote the implementation of standards-principles in the region. At present there are 11 regional groups. .

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These international norms-principles include, first of all, the principles regulated in the documents of international-legal nature:

–„International Convergence of Capital Measurement and Capital Standards: A Revised Framework" („Базель-2")[3]. Norms-principles of the Agreement „Basel-2" grouped in three main components (pillars), interconnected, strengthen and complement each other to achieve an united goal - improving the financial stability of banks.

Provisions „Basel-3" offer new international-legal regulatives: capital standards, the ratio of loan and own capital and liquidity to strengthen the regulation, supervision and risk management in the banking sector. Capital standards and new capital buffers will require banks to larger capital, and greater quality of capital as compared to the standards established in the „Basel-2". The new ratio of capital to loans introduces a risk-free basis for the calculation of minimum capital requirements in addition to a settlement system based on a risk basis. New liquidity ratios ensure the implementation of adequate finance in crisis situations.

One of the most dangerous risks to participants in the global financial market is the risk of loss of reputation as a reliable business partner closely related to corporate ethics financial environment. Arises so-called „crisis of confidence". It occurs due to disruptions in financial transactions, inability to carry out profitable activities only in accordance with the law, as well as when a suspicion of having links with criminal organizations or the inability of financial management to effectively counteract legalization (laundering) of income, criminally obtained, and financing of terrorism, and other illegal activities. In such a situation there is a risk of insufficient liquidity due to the loss of business reputation leads to the risk of insolvency and the loss of financial stability and, ultimately, to the termination of activities of a financial organization. Problems of one financial organization affects the reputation of the entire national financial system of the state.

Wolfsberg norms-principles[4], which can justifiably be attributed to international norms-principles, contain priority principles in the activities of banks to prevent the use of the banking system for the legalization of income, criminally obtained. The Bank's policy should be aimed at preventing the use of transnational transactions for criminal purposes.

The The basis of policy of any bank in this sphere of activity in accordance with the Wolfsberg norms-principles should be based on the norms according to which the bank can establish relationships only with those customers, the sources of income or financing activities which can be reasonably confirmed their legal origin. At the same time Wolfsberg norms-principles suggest that specific methods for counteracting laundering of criminal income may be determined at the discretion of the bank [7].

Insurance is one of the most important components of the economic system of the state and can not be excluded from the process of global economic integration. For example, insurance of catastrophic risks due to their scale and the impossibility of making insurance these risks sometimes even in the whole country makes an irreversible process of integration national insurance systems. Tool such integration are primarily reinsurance means that allow insurance companies to timely cope with virtually any size and complexity of the risks.

[3] htpp://www.bis.org/publ/bcbs128.pdf
[4] http://www.wolfsberg-principles.com / pdf / wolfsberg_aml_principles2.pdf .

Globalization in the insurance sphere is shown in the following:

– formation of global insurance market as a component of the global economic market;

– the concentration of insurance capital, including the merging of insurance and banking capital, leading to the formation of transnational insurance corporations whose capital is increasingly seeks beyond national jurisdiction, and the size of assets and working capital of transnational insurance corporations, comparable to the budgets of separate countries;

– growth of international portfolio investment insurance structures;

– increase in the number of international insurance transactions and, as a consequence of this, the expansion of the spectrum (the change of traditional forms and types) provided insurance services;

– regulation of economic relations in the sphere of insurance by the law, wearing a supranational / transnational in nature.

The basis of integration international standardization of regulatory requirements for insurance companies make up: conditions of establishment of the insurance company; procedure for the formation of insurance reserves; conditions of investment money means of these funds; order of accounting and reporting requirements; regulation of solvency solvency margin and financial stability of insurance companies and etc. Under the standards of the integration of international-legal regulation in the insurance sphere understands uniform requirements for insurance companies about providing their solvency and financial stability, aimed at protecting the interests of policyholders.

International Association of Insurance Supervisors (IAIS) has developed standards that establish basic quantitative and qualitative parameters of the requirements for insurance supervision to the activities of insurance companies. Standard „IAIS –Task Force on Core Principles Methodology", Approved in Cape Town on 10th October 2000[5], regulated: organization of insurance supervision and criteria for its implementation; licensing of insurance companies and their corporate governance; the adequacy of capital and assets of insurance companies with their obligations, including derivatives and notes; conditions and principles of reinsurance and conduct transboundary transactions ; financial reporting and auditing, including internal; financial monitoring; criteria for confidential information. The basis „IAIS – Investments Subcommittee", Approved in San Francisco on 8th December 1999,[6] – norms-principles, regulatory the investment activities of insurance companies, including: investment policy and strategy for insurance companies; management of investment risk; estate liability insurance companies; financial monitoring and audit of investment activity, including internal control.

Moreover, the formation of the world's economic space, and as a result, the global market, in turn, puts forward for solutions of questions about the management of globalization in the area of economics and finance on the basis of the legal array. Prototype of such global governance, carried out in the area of economics and finance, in our opinion, is currently formed at countries that have acceded to the World Trade Organization (WTO).

[5] http:// www.iaisweb.org.
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