OPEN PEER REVIEW

Foundations and Elements of Civil Liability of Regulatory and Policymaking Institutions in the Capital Market: A Comparative Study of Iranian, French, and English Law

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1. Round 1

1.1. Reviewer 1

Reviewer:

In Section 2.1, the sentence "Regulation, in its broad sense, refers to the establishment of binding rules by competent institutions…" is conceptually useful but too general for the central distinction of the article. The authors should develop a more precise taxonomy distinguishing legislation, delegated legislation, administrative rulemaking, regulatory guidance, supervisory decisions, macroprudential measures, and binding policy instruments. Not every policymaking decision is legally equivalent to a "regulation," and the civil-liability implications may differ substantially depending on whether the impugned measure is a normative rule, an individual administrative act, informal guidance, or a macroeconomic policy decision.

The discussion in Section 2.1 of "binding policymaking" requires doctrinal refinement. The sentence "In capital markets, binding policies may include interest-rate determinations, trading restrictions, disclosure requirements…" groups together measures adopted by legally distinct authorities exercising fundamentally different powers. An interest-rate decision by a central bank is not functionally or legally equivalent to an exchange disclosure rule or a market-abuse prohibition. The authors should distinguish monetary policy, securities regulation, prudential regulation, exchange administration, and market supervision, because liability standards, judicial review, causation, and immunity may differ considerably across these categories.

In Section 2.2, the sentence stating that Iranian capital-market regulatory and policymaking institutions include "the High Council of Securities and Exchange, the Securities and Exchange Organization, the Central Bank, the Money and Credit

Council, the Economic Council…" is overly inclusive and requires a competence-based analysis. The article should specify the statutory authority exercised by each body and demonstrate its actual connection to capital-market regulation. Otherwise, the concept of "regulatory and policymaking institutions" becomes so broad that it potentially encompasses almost every economic public authority. A table identifying each institution, its legal status, regulatory competence, type of measure, and potential liability regime would substantially strengthen the article.

In Section 2.2, the sentence "In France, financial-market regulators are generally regarded as 'independent administrative authorities'" should be revised with greater institutional precision. The legal status of the Autorité des marchés financiers should be analyzed specifically rather than subsumed under a generic category of independent administrative authorities. Likewise, the English discussion should distinguish the Financial Conduct Authority, the Prudential Regulation Authority, and the Bank of England in terms of statutory personality, regulatory objectives, rulemaking powers, enforcement authority, and applicable immunity provisions. The comparative analysis would be stronger if it compared actual institutional structures rather than abstract regulatory models.

In Section 3.2, the article currently treats French "administrative fault," "no-fault liability," and "risk theory" as largely parallel and overlapping bases. The manuscript should distinguish more carefully between responsabilité pour faute, responsabilité sans faute pour risque, and responsabilité sans faute pour rupture de l'égalité devant les charges publiques. These are doctrinally different mechanisms with different conditions. Particularly for economic regulation, the equality-before-public-burdens doctrine may be more relevant than a generalized "risk theory," and the authors should examine whether regulatory losses borne by a narrow class of investors could qualify as special and abnormal burdens.

The French section includes claims such as "French administrative jurisprudence requires supervisory bodies to comply with appropriate standards of diligence and care," but the manuscript does not adequately identify the relevant case law. Because the article is explicitly comparative and doctrinal, it should cite and analyze leading Conseil d'État decisions addressing liability of financial supervisory authorities, banking regulators, or public economic regulators. Generic references to administrative-law textbooks are insufficient for propositions regarding the actual liability threshold applied by French courts.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

In Section 2.3, the statement that "the relationship between the injured party and the person causing the harm is, in principle, horizontal and based on legal equality" is too categorical when applied to civil liability involving public regulators. Claims against public authorities often retain a public-law dimension even when compensation is sought, particularly in France and, to some extent, in judicial-review-related English litigation. The authors should distinguish private-law civil liability from administrative liability and explain whether the term "civil liability" is being used in a broad compensatory sense or in a technically private-law sense. This terminological clarification is essential to avoid conceptual inconsistency throughout the comparative sections.

In Section 2.4, the sentence "approximately 60 million natural and legal persons reportedly obtaining securities trading codes" should be verified, contextualized, and methodologically qualified. The manuscript should specify the relevant year, source, whether inactive codes are included, whether the figure concerns Sejam registrations or active brokerage codes, and whether legal persons are included in the same count. Because this statistic is used to support the social importance of investor protection, its accuracy is material to the article's empirical framing.

In Section 3.1, the sentence "Fault theory… is also regarded as the principal basis of civil liability in Iranian law" requires a more nuanced doctrinal discussion. Iranian civil-liability doctrine cannot be reduced to a single fault-based model because the Civil Code, Civil Liability Act, jurisprudential doctrines, statutory strict-liability regimes, and attribution rules coexist. The article should distinguish fault-based liability, liability based on causation and attribution, and special statutory liability. It should also explain whether the liability of regulatory institutions is truly governed by ordinary private-law fault doctrine or by special rules relating to public authorities and administrative acts.

In the discussion of risk theory in Section 3.1, the statement that regulators "create a risk-laden environment for investors through the adoption of binding rules and policies" is theoretically problematic. Capital markets are inherently risky, and regulators ordinarily seek to mitigate rather than create market risk. If the authors intend to rely on risk theory, they should specify the legally relevant risk: regulatory risk, exceptional public burden, hazardous administrative activity, reliance risk, or systemic intervention risk. The article should also explain why a risk-based liability principle should apply to regulatory decision-making rather than merely invoking the general maxim that those who benefit from an activity should bear its losses.

The treatment of the la darar principle in Section 3.1 requires greater jurisprudential precision. The sentence "it emphasizes that harmful legal consequences should not be permitted to remain without an appropriate legal response" risks presenting the maxim as a general principle of automatic compensation, which is doctrinally controversial. The authors should distinguish interpretations of la darar as a rule negating harmful legal rules, a limitation on lawful exercise of rights, and a possible foundation for compensation. They should also explain how the maxim interacts with tasbib, itlaf, state liability, and statutory immunities in cases involving regulatory decisions.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.