

# REGULATION OF THE ROMANIAN BANKING SYSTEM. EFFECTS ON THE MARKET ECONOMY

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## **Abstract**

*The financial crisis of 2007 has caused a number of global changes. As was normal, financial institutions, and within those the credit institutions are getting special supervision and regulation. Especially at the level of the European Union, the regulation and supervision of the banking sector reached some limits not previously seen. The present work deals with the causes and the effects regarding the regulation of the Romanian banking system. As well it has been enumerated the main legislative acts that have a significant impact on the Romanian banking activity. We came to the conclusion that we are witnessing an overregulation, whose impact is insufficiently analyzed and that has multiple effects on the economy in a negative way. We are witnessing as well an attack on the market economy, which is still in an emerging phase in Romania. We also find that there is a tendency to offer social protection to certain categories of bank customers, without the banks having this role.*

**Key words:** *regulation, supervision, Romania, prudential measures, legislation, consumer protection.*

**JEL classification:** *G21, E44, F34, K15*

## **I. INTRODUCTION**

Public budgets, in most of the developed countries and beyond, have been affected by the international financial crisis, as a result the regulation and supervision of the financial system represents an absolute necessity. The impact of financial institutions rescue measures, worldwide, was about 815 billion \$, or 3.3% of GDP. [1]

It seems that the mechanisms of financial systems self-regulation were not sufficient and effective. That is why, the current directions of the process in the field of banking regulation and supervision starts from the observation that, *tax payers have paid a huge bill for rescuing banks*, in most of the countries.

In fact, there seems to be nothing new under the sun. Over time, the prudential regulation-deregulation cycle overlaid, worldwide, the long-lasting economic cycles. After the crisis of 1933, a long regulatory period followed until the early 1970s, the main benchmarks being the *fixed exchange rates*, the US Glass-Steagall law, which provide the separation of commercial banks from the investment banks and the establishment of the deposits guarantee schemes.

In 1971, on the background of the gold crisis, the international monetary system switched to floating exchange rates, which was followed by a long period characterized by deregulation, the market mechanisms being left to function (economic agents act rationally to achieve their own interests, and the financial institutions amplify this process, generating prosperity).

The main benchmarks of this period are the liberalization of the financial market and the Glass-Steagall law abrogation in the USA, once with the adoption of legislation that allowed financial conglomerates formation, especially in the USA.

This phase of the regulation-deregulation cycle lasted for about 40 years, the end point being the moment when the crisis of 2007 began. A new phase of prudential regulation is getting starting, therefore, with 2008. The European Commission has taken steps to stabilize the banking sector, aiming to strengthen: *the regulatory framework applicable to banks operating in the EU, the banks supervision, especially of those operating at cross-border level and consumer protection in the field of financial products.*

Currently, there are at least four main regulatory areas: capital requirements, the lending domain, business and the employee remuneration mechanisms ethics, economic and financial macrostability.

**1. Capital requirements** - refers to increasing banks capitalization and liquidity requirements. It aims to increase the banks solidity and to reduce their risk of not being able to honor their obligations.

Basically, the Basel III project is being criticized and it requires that the equity level, at least for large banks, to be much higher, with higher liquidity thresholds than existing ones.

**2. Lending regulations** – it is desired to reintroduce the limits and conditions in the lending activity. The purpose of these regulations is to ensure that the level of non-performing loans is as low as possible.

Here the criteria are, usually, set at national level and aim at: limiting the total indebtedness of a person, introducing more drastic criteria regarding the advance and duration of a credit, testing the ability to pay off debts - depending on currency risk, income or interest rate risk.

**Regulations regarding business and employee remuneration mechanisms ethics** - the financial industry has not shown concern for ethical issues that have not been regulated, monitored, discussed within the financial world professions. The expectation that the trader's activity on the market will be generally ethical because otherwise the market would reject it has proven to be erroneous.

It reached to the point that the remuneration of bank leaders was made on the basis of their own appreciation and not on the basis of the appreciation and satisfaction of the beneficiaries of their performance. Going down on the hierarchical scale, managers only created the premises to meet the conditions required to get their own bonuses. That is, they have set as remuneration criterion the amount of credits, regardless the risk of default. This has led to the subprime credit crisis.

Therefore, there was no regulation to direct business ethics and remuneration mechanisms, so the regulatory institutions were starting from scratch in this area.

That's why, were issued regulations whereby the incentives and bonuses of the banking staff were related to the long-term interests of the bank, by reporting them to the bank's longer-term performance - about 4 years - and by requiring them to be largely granted otherwise than in cash. Such regulations at the European level have also been transposed into the national law.

➤ **Macro-stability regulations** - financial instability is a very serious threat to each individual's life and to the functioning of the economy. After all, bank crises are those that generate significant increases in public indebtedness.

For these reasons, is taken that the prevention of financial instability should be considered, which is costly but less costly in the medium term than letting it go on the account of market rules.

This involves a range of preventive intervention tools for banks whose situation risk to become unsustainable by common means: last resort financing, capitalization, market takeover. We are talking about administrative tools: transfer of assets and/or liabilities, creation of shadow banks or temporary nationalization.

All this involves major decisions regarding the source of funding - shareholders and bondholders, the banking industry or the public budget, as well as the establishment of better corporate governance mechanisms - rescue is done to relaunch the business, not to lead it to a new bankruptcy.

At EU level, regulation of financial services is the subject of the legislative procedure of the European Council and European Parliament (regulations and directives), while the European Commission approves the technical standards projects developed by the European Banking Authority (EBA).

There have also been established a number of institutions with a role in monitoring the financial system in the EU. The European supervisory architecture is made up of the European System of Financial Supervisors (ESFS), of which EBA, the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), which, together with the national supervisory authorities, shall ensure micro-prudential supervision and the European Systemic Risk Board (ESRB) responsible for macroprudential supervision.

## **II. BENCHMARKS REGARDING THE REGULATION OF THE ROMANIAN BANKING SYSTEM**

The prudential regulatory framework has evolved since the accession of Romania to the EU, in line with the profile rules of the community space. **Currently, Romania is crossing a fussy legislative period both, generally and at the financial-banking level.**

They are promoted, at a relatively fast pace, and sometimes even without impact studies or in-depth consultation, regulations that aim to increase the protection degree of the financial services consumer. The objective of these initiatives is to eliminate, by banks, the undesirable practices which can make vulnerable the served clients.

Specific institutions, such as the National Committee for Macroprudential Oversight (NCMO), have also been set up as an interinstitutional cooperation structure without legal personality, including representatives of the NBR, FSA and the Government. Prior to the establishment of the NCMO, decisions on the implementation of macroprudential measures such as the activation/de-activation of capital buffers were adopted by the National Committee for Financial Stability (NCFS), which was set up on July 31, 2007. [2]

Romania is among the few European countries that did not pay out from public funds to save the banking system. In fact, the Romanian banking system did not need this. However, the Romanian banking system felt a number of negative effects of the financial crisis.

We can take into account the high level of non-performing loans recorded. The non-performing loans indicator reached a record of 31.5% in 2013. Also, during the period 2010-2014, the Romanian banking system, as a whole, recorded losses (4.4 billion RON only in 2014).

The annual growth rate of credit over the period 2010-2016 was modest. In the years 2013 and 2014 it even had a negative evolution, which led to a decrease in the level of financial intermediation. The share of credit in GDP reached 28.3% in 2017, compared with 30% in 2015 and over 39% of GDP, level registered before the crisis. [3]

It can be concluded that Romania is registering almost no credit growth, with GDP growth in 2017 being 6.9% and the credit growth being 5.5% (GDP increased by 4.8% in 2016 and the credit only 1.2%).

**In the context of a weak financial intermediation, by introducing tougher conditions, the access to credit, which is any way affected by the crisis, will be further reduced, as has been shown above.**

All sides of banking activity are "touched" by the regulations wave. In recent years, there is a growing concern among EU leaders in regulating the lending domain in order to ensure more appropriate information and increased consumer protection.

Moreover, there is no longer just acting through the capital channel on the credit supply, but also on the credit demand through Debt Service-to-Income instruments (DSTI) or credit coverage through Loan to Value guarantees (LTV).

Romania has a relatively long history of using these instruments, the first such regulations implemented by the NBR aimed primarily at lending to the population. The first regulation on DSTI was introduced in 2003 by Norm no. 15, setting a maximum indebtedness degree of 30% for consumer loans and 35% for real estate loans for both, RON and currency loans. In 2005 a limit of 40% was set for debtors' total indebtedness.

In the period 2007-2011, a "self-regulation" system was introduced, the credit institutions defining, by internal rules, the maximum level of indebtedness according to the debtors' risk profile.

The rules valid until 31.12.2018 were introduced by the NBR Regulation no. 17/2012 on certain credit conditions, and provide as obligation of credit institutions to calculate the maximum level of indebtedness by taking into account a stress scenario that reflects the currency risk, interest rate risk and income risk. The Regulation stipulates the following shocks to be applied for the calculation of maximum DSTI: the national currency depreciation of 35.5% than the euro, 52.6% than the Swiss franc and 40.9% than the US dollar; 0.6% interest rate shock and 6% shock for monthly income.

By amending the NBR Regulation no. 17/2012, starting 2019, January 1<sup>st</sup>, the maximum level of indebtedness will be of **40% of the net income on loans in RON and 20% in foreign currency**. The total indebtedness degree is determined as the weight of the total monthly payment obligations reported to the monthly net income. The maximum indebtedness rate **is increased by 5% for loans for the purchase of the first dwelling to be occupied by the borrower/debtor**. [4]

Another important tool to limit excessive indebtedness of the population is to limit the amount of credit to a share of the associated collateral, the advance being the difference between the collateral amount and the credit amount.

Romania's experience in using this tool has been over a decade. The first regulation implemented by the NBR on a maximum threshold for the ratio between the loan amount and the amount of the related collateral (LTV) was introduced in 2003 and the LTV level was set at 75% for both, consumer and real estate loans.

The measure was abolished at the beginning of 2007 (when Romania joined the EU), along with other measures aimed at lending the population.

In 2011, the NBR proposed a distinct approach, with restrictions on LTV being set according to the type of borrowers (covered or not at the exchange rate risk) and credit foreign currency: 85% for real estate loans denominated in local currency; 80% for real estate loans in foreign currency granted to debtors covered at the foreign exchange risk; 75% for euro-denominated real estate loans granted to debtors not covered at the foreign exchange risk and 60% for real estate loans denominated in another currency granted to debtors not covered at the foreign exchange risk. The LTV limit established by the NBR Regulation no. 17/2012 was introduced in the case of newly granted real estate loans, excepting those contracted under the "First Home" government program, for which LTV may be up to 95%.

The introduction of DSTI and LTV generated a decrease in the growth of lending the population. Specialty studies demonstrate this. [5]

Since 2009, the NBR has tightened its lending standards for both, housing and land purchase credits as well as for the consumer credit.

In the context of non-performing loans growth, the NBR has forced banks to make specific credit risk provisions. Increasing the volume of provisions forced banks to raise funds to cover their liquidity risk. The increase in provisioning expenses has led banks to register losses since 2010.

In order to recover the blocked amounts with the risk provisions, which can turn into revenues, the banks resorted to selling non-performing loans (in 2015, BCR sold a portfolio of non-performing corporate loans with a nominal value of 1.2 billion EUR).

Therefore, the sale by banks of non-performing loans is the result of measures taken by the NBR, especially through the provisions establishment. The National Bank of Romania has imposed drastic criteria for non-performing loans provisioning, indirectly forcing banks to sell these loans at derisory prices in order to pass on profit.

As it is known, banks have to respect both, the existing legislation and the specific banking legislation. Therefore, we will continue to highlight other regulations of impact on banking activity.

On 1<sup>st</sup> October 2011, the Law no. 287/2009 on the Civil Code entered into force, republished. Banking specific contracts, such as current bank account, bank deposit, credit facility, and safe deposit vault renting, are regulated for the first time.

Concerning the current account, it is stipulated that the account holder may, at any time, disburse the credit balance, but allow the parties to provide a notice period, case in which the account holder will be able to dispose the credit balance in compliance with that term. A current bank account contract for an indefinite period may be denounced unilaterally by either party, respecting a 15 day notice, unless otherwise stated in the contract or custom. Also, the assets and liabilities may offset each other if there are several legal relationships or multiple accounts between the credit institution and the client (even in different currencies), unless the parties agreed otherwise. It is provided the right to obtain the refund of the credit balance resulting in the closing of the current bank account, this right being prescribed within 5 years from the date of the account closure.

**These provisions are likely to better clarify the client-bank relationship and were generally practiced by Romanian banks and have a positive impact on banking activity.**

Concerning the bank, two main types of bank deposit are regulated: funds deposit and the securities deposit. In the case of a funds deposit, the credit institution shall be obliged to provide, free of charge, information to the client on the transactions carried out in its accounts. Unless the customer requests otherwise, the information will be provided on a monthly basis under the terms agreed by the parties. By depositing securities, the credit institution shall be empowered to manage them, unless the parties establish otherwise, in accordance with the rules governing the management of another's assets and prohibits the terms by which the credit institution is exempted from the responsibility for not performing the obligations to administer titles with caution and diligence.

**These regulations have a negative impact on banking activity generating costs (the obligation to inform) and the poor clarification of prudence and diligence concepts may also have negative effects on the bank's image.**

The new Civil Code defines the credit facility as the contract by which an entity authorized by law undertakes to keep, at the client disposal, a sum of money for a fixed or undetermined period of time. The financier has not the right to terminate the contract unilaterally only for thorough reasons, concerning the beneficiary of the credit facility. In the case of unilateral termination, the client loses the right to use the credit, and the financier is obliged to give at least 15 days for repayment of the amounts used and their accessories. The credit facility contract made for an indefinite period may be denounced unilaterally by any of the parties, subject to a 15 days' notice, unless is otherwise stated in the contract or custom. The financiers must pay particular attention to the drafting of contracts concluded for an undetermined period, in the light of that, the new code does not regulate the situation of the amounts reaching their maturity owed to the financier at the unilateral termination of the contract by the borrower.

It is regulated, for the first time, the conditions for the rental of the safe deposit vault, which can be done by credit institutions, but also by other entities providing such activity under the law. Therefore, are created the premises for increasing competition in this area.

One of the rather controversial regulations is Law no. 77/2016, the **Paying Law**, which applies both to the contracts concluded after the entry into force of the law and to the contracts in progress at the moment when the law enters into force. By applying to credit agreements concluded prior to its entry into force, it does not only affect the present or future effects of the old legal relationship but also amends the old legal relationship, because the effect of the new law is even to change the consumer's obligation by ending the credit contract.

The law, at the time of the credit agreement conclusion, provided that the bank gave the consumer a sum of money and is entitled to receive exactly the same amount of money plus the interest rate. The new law obliges the creditor to receive not a sum of money, composed of principal and interest, but a property right over a building, which affects itself the content of the legal relationship concluded under the old law.

**Violation of the non-retroactivity principle of the law means actually changing the "rules of the game during the game".**

**Obliging banks to receive in exchange for borrowed money, goods, is an interference with their object of activity (the object of banks activity is the sale-purchase of money).**

As well, the law does not specifically lay down the objective criteria underlying the determination of consumer categories that can benefit from its prerogatives, thereby creating the possibility for a contractual party (the debtor) to make discretionary decisions and to break contractual obligations, prejudicing the other party whenever it will want. There is no difference between good faith and bad faith debtors, the legal text being unpredictable even if a court verifies the conditions for the unpredictability existence.

Unpredictability also arises from the provisions establishing a minimum of 30 free days during which the representatives of the credit institution will be summoned to the notary, but not a maximum term, the consumer having the possibility to set a time limit for convening while he is exempt from the rates payment,

while the credit institution has no legal means to recover its claim and the consumer can freely benefit from the use of the mortgaged property under the guarantee.

The legislator, breaking the proportionality principle, makes no distinction as the credit claims, arising from credit agreements, have been or not passed on to other economic operators and if those have, in any way, abused the rights conferred by law.

Even though "The call for payment has increased slightly to September 2017, and applications remain *under the contestation (71 percent of the total). The number of notifications increased by 6 percent in this period reaching 8459 (2 April 2018), and the amount of concerned credits is reduced (2.4 billion RON)*" [6], it can be said that even the Constitution is breached by restricting the exercise of some rights or freedoms, namely the right to economic freedom.

The use of the law is left to the consumer's discretion, which is a serious violation of the right to economic and trade freedom as it interferes with the legal relationships between banks and consumers, affecting essentially the consideration to which the lender is entitled to conclude the credit agreement. Reducing the rights of the bank is not proportionate to the aim pursued by the legislator.

There are opinion according to which the law does not violate the free access to the banking activity and the exercise of the activity under the conditions established by the law, and there is not any restriction of the right to carry out the banking activity, **however, the banking activity is disturbed, limited.**

It was found, as well, the violation of the private property right provided in the Constitution, by regulating the extinguishing of debts after payment, the bank is most often in the situation where, by the law, it is forced on the one hand to receive in property a good and, on the other hand, is deprived of the possibility of using part of his claim, without receiving any compensation, which is equivalent to a real expropriation without right and prior compensation.

The regulation of abusive clauses in contracts concluded with consumers is based on a bushy legislation in Romania, that starts with Law no. 193/2000 on abusive clauses in contracts concluded between professionals and consumers, which transposed Directive 1993/13/EEC of the Council and was amended by Law no. 76/2012 for the implementation of Law no. 134/2010 on the Civil Code Procedure, which regulated the possibility of formulation of the so-called injunctive collective actions in order to transpose Directive 2009/22/EC; Law no. 289/2004 on consumer credit for consumers; Law no. 363/2007 on combating the incorrect practices of traders in relation to consumers and harmonizing the regulations with the European legislation on consumer protection, GEO no. 50/2010 on credit agreements for consumers transposed Directive 2008/48/EC, culminating with the GEO no. 52/2016 on consumer credit agreements for real estate and for the amendment and completion of GEO no. 50/2010, represents the transposition of Directive 17/2014 and amending Directives 2008/48 and 2013/36/EU and EU Regulation no. 1093/2010.

It is assumed that a consumer is the weaker part of the credit contract because of his inferiority both, in terms of negotiation and information possibility. **The concern of the European and Romanian legislator on consumer protection is due to the so-called fragile position which its (borrower) occupies in a credit contract, assuming that a credit contract is an adhesion contract, to which the borrower understands to adhere or not, not being able to influence its content, the clauses being standard, predetermined, and the lack of negotiation of the contract content creates a threat of abuse of a dominant position from the banks part.**

Legislation in the field force the banks to inform and advise clients on clarifying the financial or technical opportunity to conclude the contract and is designed to avoid over-indebtedness, the impossibility of repaying the credit, which would have adverse consequences for both, the debtor and the creditor. In addition, the test in front of the organs should be done by itself, if the client claims that it would not have been properly performed.

The courts have the role of assessing whether, at the time of the credit agreement conclusion, the bank has properly fulfilled its obligation to inform the client on the risks it is exposed to by purchasing a product, presenting him different scenarios of payment schedule generated by the change of currency course and the devaluation of the national currency in which the debtor collects its income. It is assumed that what was predictable for the professional was totally unpredictable for the average consumer. Thus, a professional who has not demonstrated the proper performance of his duty to advise the consumer, is guilty by omission and cannot claim to require the consumer to bear unknowingly the consequences.

The good faith of the bank will be appreciated not only by the data that it actually knew at the time of the contract, but by what it could and should know in relation to its information and expertise which it has as a professional. In relation to this it will be analyzed the extent to which it has let the consumer knowing the relevant aspects, in order to make a responsible decision on his part. If for various reasons the bank does not know certain data and future information, it can be sanctioned. So we sanction the professional activity, which only the "market forces" can fine.

**It extends the notion of a professional obliged to advise a client as well to the banks, as in current practice it is considered that there are obligations between a professional and his client on the basis of a contract concluded between the two.**

The fact that a credit offer has been made available to the complainant and the credit agreement has been concluded is not evidence of the contractual clauses negotiation. As long as the defendant does not prove that he was negotiating with the consumer the allegedly abusive contractual clauses, the simple fact that the consumer had the initiative to conclude the credit agreement and the simple fact that he could have renounced to the contract, by refusing the offer of the bank, remains irrelevant.

A contractual clause that has not been negotiated directly with the consumer will be considered abusive if, by itself or with other contract provisions, it creates, to the detriment of the consumer and contrary to the requirements of good faith, a significant imbalance between the rights and obligations of the parties (Art. 4 of Law 193/2000).

If the clause is abusive, it will not have any effect on the consumer. This Directive formulation has given rise to a number of judgments, considering that it indicates as a abolition cause either: unenforceability, reduction, non-existence, absolute nullity, consideration of the clause as unwritten.

The absolute nullity thesis is justified in the circumstances in which the court which has taken the abusive nature of a particular clause, is not in a position to appreciate the opportunity of the clause dissolution, but only the extent of its effect in the sense that it will entail the dissolution of the entire contract, where clause was an essential one, which would constitute a total nullity, or decides to continue the contract with the consumer's consent, even without that clause that has been removed - which corresponds to a partial nullity.

The thesis of the unwritten clause has gained more and more ground, in the conditions in which this sanction is in fact an absolute partial nullity, which operates justly.

It should be noted that under Art. 6 of the Law no. 193/2000, the continuation of the contract is possible only with the consumer consent, which is equivalent to the adoption of a higher standard of protection compared to that offered to the consumer through the European Directive. **In many cases, however, the decision to terminate the contract will not be favorable either to the consumer, as this would imply an early declaration of credit maturity, with the consequence of obliging the consumer to pay in full the outstanding debt.**

In the case of the contract cancellation from which the claim was born, the nullity of the principal contract does not entail the nullity of the mortgage contract, despite its accessory nature, **but it will only guarantee the amount determined under the credit agreement.**

Although the legislator's wish was to protect the average consumer, the consumer protection not being an absolute one to relieve him of any responsibility when concluding a banking contract; all of this brushy legislation, which may be interpreted differently by courts, has led to interpretations and to the banking system culpability.

Interpretations and questions that it can be asked:

- the bank contracts are, however, consensual or not ?
- the obligation of the defendant banks to demonstrate the negotiation of the so-called abusive clauses shows that the law reverses the burden of proof,
- how much can the court intervene in interpreting the clauses of a credit agreement, or rather, which is the degree of court intervention in the content of the contract in the case of abusive clauses interpretation, a contract that is a will agreement of both parties,
- the borrower's obligation to give complete information about his financial, personal, real situation when he is requesting the loan, does not appear anywhere; this state can be ascertained when the loan is not reimbursed and the bank does not take the credit possession,
- non-unified interpretations and unpredictable solutions are possible to be given by the courts,
- the lack of objectively appraisal criteria between the "abuse" and the abusive character of clauses,
- from here results a disproportionality between rights and obligations.

The General Data Protection Regulation (GDPR), transposed into Romanian legislation by the General Personal Data Protection Regulation no. 679/2016, began to produce its effects starting with May 25, 2018, and from that time onwards, the IT systems of companies that store personal data, including banks, must allow to a very good control of users' identity and the access to them, following the "*Privacy by Design*" principle.

There is not a single legislation on this issue, but three. A common point of the three European acts (GDPR - General Regulation on Personal Data Protection, NIS - Directive on security of network and information systems and PSD II - Payment Services Directive) is the protection of personal data.

Identity, transaction, financial, demographic, localization, or other personal data of a physical person, as user of certain services, must be collected and processed responsibly by the banks.

In this context, in the banking system, in order to offer the most competitive services, to execute the transactions initiated by the client, but also to fulfill the legal obligations of the bank or for other legitimate

purposes, personal data may be transmitted to public authorities, judicial bodies, notary offices, external consultants, parent company and other entities of the group to which the banking institution belongs.

In order to ensure obligation compliance, the GDPR provides very high fines, which quickly reach 10 to 20 million euros or between 2% and 4% of the total annual turnover. However, fines and controls by the supervisor authority, which will have extensive powers, do not represent the only problem for the banks. Failure to comply with GDPR provisions may impact the reputation of a bank, whereas trust in customers is a basic principle of the banking system.

All these, especially when, in the new context banks are no longer the only source of financial services, with Fintech companies or IFNs, which are an increasingly strong competition on the traditional banking market and to whom can be easier implementing obligations under the new Regulation.

In the absence of a contract to legitimize the processing of personal data, the banks will have to obtain the express consent of the data subjects for each processing carried out. Furthermore, should be provided a mechanism for withdrawing consent at any time and that cannot be more complicated than the one used to obtain it. The GDPR approach to ensure increased protection of personal data by introducing new rights for data subjects is also reflected in the correlational obligations of personal data operators. Thus, banks will have to allow data portability, a requirement stipulated by PSD II as well, and deletion of all data on a targeted person, in some cases explicitly regulated. Particular attention should also be paid to the obligation to notify the supervisory authority and the data subject about the breach of personal data security, which is a common aspect of GDPR and NIS. Appropriate technical and organizational measures should be taken to identify, control and subsequently report data breaches, often in the current context and under the pressure of cyber attacks.

In addition, it is necessary to appoint a Data Protection Officer who will coordinate the processing activity, will be the contact point for both, the supervisor and the persons concerned, and will assist the bank in all the steps taken to comply with the obligations imposed by the GDPR.

However, changes to the personal data protection should not be seen as obligations but opportunities to improve the organizational structure of the bank, to update the stored personal data, to implement new technologies, to obtain the consent of the clients, to inform them regarding the new obligations and, in particular, to strengthen the relationship with them.

**However, these regulations will also bring new costs to banks, with relatively large effects, especially for small and medium banks, costs which will be passed on to customers.**

An important regulation is the **NBR Regulation no. 5/2013 regarding the prudential requirements for credit institutions**, containing the definitions of risks to be covered by credit institutions (interest rate, reputation, market, credit, country, transfer, liquidity, strategic, general and macroprudential risks).

This regulation is the transposition into Romanian legislation of EU Regulation no. 575/2013 of the European Parliament and European Council regarding the prudential requirements for credit institutions and investment firms and amending the EU Regulation No. 648/2012.

Article 92 of **Regulation No. 575/2013** provides that credit institutions must meet at any moment the following requirements regarding the own funds: a rate of basic Tier 1 own funds of 4.5% of the total amount of risk exposure; a rate of Tier 1 own funds of 6% of the total amount of risk exposure; and a total own funds rate of 8% of the total amount of risk exposure.

Capital requirements for credit risk coverage are set for losses with low probability and occurrence but with significant impact (unexpected losses).

There are also several capital assessment criteria, some of which are minimal, supplemented by fixed capital buffers - capital supplements for banks of systemically importance and countercyclical variable capital buffers - which accumulate in growth periods and are used in recession times. There are four types of buffers, as follows:

**The capital conservation buffer** is intended to increase the ability of credit institutions to absorb potential losses resulting from banking activity. The buffer consists of basic Tier 1 own funds, amounting to 5% of the total amount of risk exposure. The way of implementation can be adapted to specific national situations, starting January 1<sup>st</sup>, 2019, has to be of 2.5%.

**The capital buffer for systemic risk** take into account the structural size of systemic risk and the risk-spreading at the level of the financial system. The purpose of this buffer is to strengthen the resilience of the financial system and its sub-assemblies to shocks generated by changes in legislation or accounting standards, contagion effects from the real economy or other internal/external channels, excessive concentration, or oversize of financially system relative to the size of the economy, on the background of the complexity growing and of the financial innovation process. It is recommended that the buffer level to be calibrated to 0%, 1% and 2%, based on the average levels of the last 12 months of the non-performing loans ratio and the coverage by provisions ratio.

**The anti-cyclical capital buffer** aims to increase the resilience of the banking sector to potential losses caused by excessive credit growth. The buffer is formed during the excessive credit growth period as a supplement to the capital conservation buffer and can be released in the contraction phase for the purpose of

absorbing losses. The rate of the anti-cyclical buffer, expressed as a percentage of the total amount of the exposure to risk, determined by credit institutions holding credit exposures in Romania, should be between 0% and 2.5%, calibrated in steps of 0.25 points percentage or multiples of 0.25 percentage points. In justified cases, a percentage of more than 2.5% of the total exposure may be set.

**The capital buffer for other systemically important institutions** (O-SII buffer) is a capital reserve that must be set up to diminishing the systemic risk generated by the size of credit institutions. Upon the recommendation of the macro-prudential authority, the competent authority may impose on each consolidated, sub-consolidated or individual O-SII institution, where appropriate, to maintain a buffer of up to 2% of the total amount of risk exposure.

Summarizing, for Romania, starting from January 1<sup>st</sup>, 2019, the capital buffer is 2.5% of the total amount of the risk exposure for the 29 credit institutions under Romanian jurisdiction, and from this date has been imposed a capital buffer regarding other institutions of systemically importance (O-SII buffer), calculated on the basis of the total risk exposure amount for a number of nine credit institutions, as follows: 2% for Banca Comerciala Română SA, Raiffeisen Bank SA, Banca Transilvania SA and CEC Bank SA; 1.5% for OTP Bank Romania SA and 1% for UniCredit Bank SA, BRD - Groupe Societe Generale SA, Alpha Bank Romania SA and Garanti Bank SA. The other two buffers are still 0.

**Apart from the existence of increased capital requirements, we can also see discrimination between credit institutions, the nine ones having higher requirements than the others. This may have implications for the costs of banking products and services, therefore a lack of equal competition conditions.**

There are studies that estimate the impact of measures to implement regulatory requirements on bank costs and, implicitly, the costs borne by bank customers.

In response to the expected increase in regulatory costs, average bank credit rates could increase by 28% in the US, with 0.17% in Europe and 0.08% in Japan, on long term. It seems that they are not very high because, by comparison, the smallest increase with which the major central banks in the world adjust their short-term monetary policy rates is 0.25%, which seems to have a small effect on the economic growth. [7]

Other studies, such as Mendicino's quantitative model [8], provide a unitary framework to assess the impact of higher capital requirements on economic activity costs. The authors assess the impact of growth of the capital requirement by a percentage point, indicating the fact that interest on euro area loans to households increased by 2.8% and interest to non-financial corporations by 4.9%. Also, loans to households and non-financial corporations decreased by 0.15% and 0.43%, respectively. There is also a negative impact on GDP, which decrease by 0.04%.

**Therefore, there are additional costs for banks due to capital requirements that are likely to be transferred to the economy, as a whole, by rising credit prices and reducing lending/crediting. This effect will not be uniform between the types of borrowers/debtors, the analysis indicating that SMEs and individuals will be particularly affected.**

Estimate of credit interest increase reflect the cost of allocated capital, other financing costs, credit losses, administrative costs, and a few other factors. There is great uncertainty about these cost influences, and an analysis of their sensitivity to tightening regulations in the field makes it more difficult to calculate estimates regarding the increase in the credit cost.

No matter how hard it can be to calculate the impact of regulation on the cost of credit, empirically, higher safety margins in terms of capital and liquidity will lead to an increase in the operating costs of creditors, affecting bank customers, employees and investors.

**The quantitative requirements for limiting liquidity risk are introduced in the Romanian legislation by the same Regulation no. 575/2013, taken over by the NBR Regulation no. 5/2013**, transposed in practice by the NBR Regulation no. 25/2011 regarding the liquidity of credit institutions. As noted, the NBR had imposed liquidity rules two years before the emergence of 2013 EU regulation.

According to the NBR Regulation no. 25/2011, the liquidity ratio is calculated as the ratio between the actual liquidity and the required liquidity on each maturity band and the maturity bands are: up to one month, one month to 3 months, 3 to 6 months, 6 to 12 months and over 12 months. [9] The liquidity indicator is calculated for credit institutions with Romanian legal personality (excluding branches of foreign banks), the minimum regulated level being 1. Are calculated and reported to the NBR a series of indicators such as:

– **Liquidity Coverage Ratio** (LCR), calculated for credit institutions with Romanian legal personality (excluding branches) as the ratio between the value of liquidity reserve and the net liquidity outflows at the aggregate level, the minimum regulated level being 90% starting with 2018. The requirement to meet the liquidity needs has been continuously increasing: on 1<sup>st</sup> October 2015, the moment of the entry into force of the Delegated Regulation (EU) no. 61/2015, the liquidity coverage requirement was 60%, in 2016 it was 70% and in 2017 80%. At present, the liquidity coverage ratio is regulated on the total component (RON and foreign currency), but not on significant currencies. The LCR promotes the risk profile improvement of the short-term



liquidity of credit institutions by imposing a volume of high quality liquid assets, sufficient to survive a stressful scenario over a 30-day period.

– **the indicator immediate liquidity** calculated for all credit institutions (including branches of foreign banks) as the ratio between deposits and deposits to banks at net value and government bonds free of pledge) and total debts, the minimum being 30%.

follows the implementation of a measure regarding LCR differentiated based on the currency denomination and the monitoring of the Net Stable Funding Ratio (NSFR) defined as the amount of stable funding available related to stable financing needs, differentiated depending on currency for the significant currencies.

In Romania, reserves requirements (RMO), represented by the cash reserves of credit institutions, in RON and in foreign currency, held in accounts opened with the NBR, make the requirements for liquidity indicators easier to achieve. Important is to mention that the RMO rate at this date, both in RON and in foreign currency, is 8%, one of the highest in the EU.

Concerning liquidity requirements, simulation-based studies suggest that there is a considerably larger impact of liquidity requirements on loans than on capital requirements, as shown by a decreasing dynamic of credit from 3% to 26%. However, these results are often determined by country-specific assumptions. [10]

Legislation regarding the capital and liquidity has a different impact on banks' balance sheets. Changes in requirements directly affect the bank's reactions through two key interactions: the bank's balance sheet in response to changing capital requirements will have implications for liquidity management and vice versa. For example, banks reduce interbank lending and buy government bonds in response to liquidity requirements increase, which in turn can reduce risk-weighted assets and hence increase the capital ratio, contributing to increasing capital requirements.

Higher capital requirements directly increase bank financing costs, which in turn reduces lending to individuals and businesses. Changes in liquidity requirements reduce the transformation of interbank lending and maturity, which also has an impact on the loan. Reducing the loan reduces consumption, investment and GDP.

Overall, the net benefits of regulation can be considered as expected losses that are avoided in the event of a crisis (the benefit), which is offset by the opportunity cost of the reduced economic activity in non-critical periods.

**This finding suggests that banks' demand to maintain liquidity buffers, such as the LCR, could have a similar impact to increasing capital requirements. In other words, liquidity requirements can replace capital rather than complete it.**

Credit risk losses are covered by provisions for losses incurred during the year in the normal course of business (transition to IFRS), significant reduction in the level of provisions (losses accounted for credit risk through the late loss recognition in the accounting, only when a generating event occurs).

The capital requirement for market risk is primarily determined as the sum of the trade-specific risk requirements (trading book) - investments held for short-term resale and foreign exchange risk (capital requirements for currency imbalances between assets and liabilities). The capital requirement for operational risk is determined by the volume and complexity of the bank's business.

The CRD IV legislative package aims to discourage the culture of taking excessive risks for short-term success, in return for long-term profitability and safer risk management, the legal framework for Romania is represented by GEO no. 99/2006 and the NBR Regulation no. 5/2013.

Qualitative rules on the bank's management framework and remuneration policy refer to:  
establishing a clear organizational structure with well-defined, transparent and coherent responsibilities;  
persons in leadership and/or management positions must be suitably trained, to have the necessary skills and experience and to exercise their responsibilities with honesty, integrity and objectivity;  
establishing an adequate remuneration policy that does not encourage short-term profitability by taking excessive long term risk.

The remuneration policy must correspond to the culture, objectives, long-term strategy and to the control environment of the credit institution, as provided for in art. 169 of the NBR Regulation no. 5/2013. The remuneration policy includes measures to avoid conflicts of interest, sets incentives offered by the remuneration system based on risk considerations and profit timing. Remuneration policies should encourage a strong risk culture in which risk-taking behavior to be appropriate and to encourage employees to take into account the interests of clients as well. Staff should not be dependent on variable remuneration, as this leads to excessive short-term risks, including abusive product sales.

It is anticipated to regulate the consumer credit price by introducing direct restrictions on the level of interest rates (conventional interest, sanctioning).

### III. CONCLUSIONS

A prosperous economy needs healthy banks and banks, to be solid, need a prosperous economy. We believe that we hurried when we blamed the banks analyzing the financial crisis of 2007. After all, banks are acting in an imperfect economy, more or less regulated, that generates impulses to all economic actors and those could generate a crisis.

Following these analyzes, it was considered that the best is to start a strict regulation of the banking sector only, seen as the only generator of instability and crisis.

It starts from the premise that banks should not give credit to an economy that cannot reimburse them because of the difficulties that go through, instead of regulating, even correcting the economy, to make it repay the loans.

The financial crisis was a trigger for the creation of new supervisory authorities and a continuous and "aggressive" flow of new regulations that obliges banks, especially European ones, to spend billions on technologies and operations of regulatory compliance. Now, ten years after the crisis, four years after the establishment of the unique supervision mechanism in Europe and Basel IV at the gates, the frequency of changes and the introduction of new requirements remain high and many of the "actors" are dissatisfied. Financial institutions complain about the high cost of compliance, and regulators are dissatisfied with the data quality and the transparency level. [11]

An unbalanced regulatory trend has been identified in the way to protect consumers against banks and the way the market economy works. In addition, the EBA faced short deadlines and there was no assessment of the overall impact of the legislative package. [12]

Strengthening capital requirements generates difficulties for banks when it comes to increasing lending. Romania

is at the bottom of the rankings in terms of financial education, inclusion and financial intermediation. However, these elements, combined with the high level of indebtedness, especially for low-income people, and with low confidence in the financial and banking system, do not justify an unbalanced regulatory tendency, meaning over-protecting consumers to the detriment of market economy functioning. Regulatory measures need to be carried out in the most balanced way in relation to the market needs and should be directed, particularly, towards products inducing risks, that are not easily understood by consumers, and not to the whole banking system.

These regulations can have a double effect. More equity means more security, but it also means lower profit rates, thus lower investor attractiveness to the banking sector. Stimulating investors will imply increasing profitability, which, in the conditions of capital growth, implies income increase, and thus a price increase of the banking services.

In other words, if society as a whole wants more security of financial services, it has to pay a higher cost for them. Which is the cost? Is it somewhat higher than it has been paid to save the banking system in some countries?

A regulated risk reduction also implies a strong drop in the volume of financial intermediation, and shareholders are expected to prefer a reduction in assets to the detriment of the capital increase, recapitalization generating an unjustified cost in banking activity. If we consider the low degree of financial intermediation in Romania, there is a new inconvenience generated by excessive and undifferentiated regulation depending on the degree of financial intermediation in each country.

Setting higher liquidity thresholds leads to less financial intermediation. This is a reduction in the social function of banks, but also a reduction in the financing of the real economy, meaning a reduction of the economic growth, thus making it more difficult to exit the recession.

However, an essential prerequisite for lending is that access to such a service can not be a right for the consumer and, implicitly, an obligation for the lender, but is a service of commercial nature offered on the basis of supply and demand, for which the knowingly consent of both parties is required, when the contract is concluded, with full knowledge of the risks assumed.

Ensuring a balanced competitive environment, while reducing the contagion effects on the other institutions within the financial system, is a demand that we must look at as a priority. Maintaining a healthy banking system also involves existing complementary mechanisms to prudential regulations or to business conduct, such as market discipline. In a competitive economy, clients and their creditors themselves need to protect their own interests by taking action to maintain and protect economic stability for the benefit of both parties.

The impact of such legislative initiatives may generate major risks to the stability of the banking system. This approach gives the illusion of problem solving and causes short, medium and long-term side effects such as: disrupted functioning mechanisms of credit market, prejudice to the interests of good faith creditors, slowing innovation in banking domain, restricting lending, stimulating a behavior characterized by low debtor responsibility and non-performing loans rising.

In essence, the Paying Law establishes a social protection measure, but not supported by the state (which is responsible for social protection), but by private law subjects.

If we look at the effects that the buffers can have on banking activity in general, we can see that because only supervisory authorities can force certain banks to use buffers, the decision is discretionary, the measure seems excessive, and appears the stigma associated with the use of buffers. This creates obstacles that can undermine their effectiveness.

Legal rules can not substitute ethical standards. Over-regulation can not cover all non-compliance hypothesis to ethical standards. Compliance with legal norms does not necessarily imply compliance with ethical standards.

Centralized administrative decisions do not have anything to do with the free enterprise principles and with the market economy that we want to consolidate in Romania.

We believe that actual regulation and future trends are a barrier to the market economy, a brutal state intervention in free-market mechanisms. All consumer protection legislation is nothing more than a socialization of banking activity, forcing banks to simply make social protection. The common law principles of contracts and, in particular, contractual freedom being affected, it takes place a limitation of contractual freedom.

Regulatory reforms could lead to an increase of the financial activity towards an unregulated "*thin banking*" sector, with unclear consequences for systemic risk.

The new regulations regarding the capital will reduce banks' appetite for low-risk loans. "*Neutral*" risk rules will encourage banks to increase exposure to high-risk loans to maintain a reasonable return on capital. This is mainly due to the increase in capital cost for assets affected by capital requirements, which are not included in current prices.

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