

THE JURISDICTION OF FINANCIAL MACRO-RISKS MANAGEMENT

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Abstract:

The macro-prudential oversight of the financial system must be conducted by a structure that brings together the representatives of the institutions responsible for supervising the financial-banking sector. An important role in this context is to provide an overview regarding the macro-prudential policy, namely to ensure the proper functioning of the financial-banking system. However, this requires an appropriate legal framework, adjusted to the European standards. Therefore, the author of this paper focuses on the relevant elements in the field, approaching facts from the regulatory perspective.

Key words: Financial risks, European normative, the National Committee for Macro-prudential Supervision.

JED Classification: M41

1. The European context

The reform of the European financial system is a dynamic process, given the speed at which the legislative, institutional and operational changes occur in the European area. Almost all Member States have amended or take into consideration the amendment of the legal and institutional national framework for implementing the European decisions in order to ensure the most effective coordination of the management policies on national and European financial stability (EM-PL, 2014). The theme of the macro-prudential policy - with the ultimate objective of avoiding the macroeconomic costs resulting from the instability of the financial system as a whole - has been intensely debated in the legal and economic spheres, the subject being fueled especially by the problems raised by the global financial crisis (Isărescu, 2011). Moreover, the crisis also determined the measure taken at the European Union level to create the European Systemic Risk Board (ESRB). Regulation (EU) No. 1092/2010 of the European Parliament and of the Council (L.331/1/OJEU, 2010) refers precisely to the European Union macro-prudential oversight of the financial system and the establishment of the European Systemic Risk Board. This structure (ESRB) is responsible for overseeing the plan shown, counting on a notable contribution to the prevention or mitigation of the systemic risks threatening the financial stability of the Union. In this context, it becomes necessary the adoption of regulations also in Romania reflecting the resilience and adjustment of the national institutions and policies in response to the European decisions and as a means of assuming accountability as a European Union Member State.

2. The legislative gaps on the responsibility to maintain the macro stability in Romania and some regulatory attempts in this matter

In most Member States of the European Union the responsibility to ensure the financial stability belongs to the Ministry of Finance, the central bank and the financial supervisory authority/authorities. At the national level, until the present date, the responsibility to maintain the stability of the financial system as a whole has not been regulated explicitly. The supervision of the national financial system is provided by two

institutions: the National Bank of Romania (in the sector of credit institutions) and the Financial Supervisory Authority (for the capital market, the insurance sector and the private pensions system). Thus, one cannot speak of exclusive competence in maintaining the stability of the financial system as a whole, as this competence is not conferred to a single authority. The legislation governing the activity of the two national supervisory authorities includes provisions referring to their mission to maintain the financial stability in the supervised sector. However, according to several European standards, including that on the macro-prudential mandate of the national authorities (ESRB/2011/3), the immediate establishment of a macro-prudential authority is necessary. In this sense, a bill was initiated - on the macro-prudential oversight of the national financial system (EM-PL, 2014).

The adoption of that particular regulation is intended to ensure (PL, 2014):

- The transposition of the provisions of Sections I and II, Chapter 4, Title VII of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (OJEU no. L 176 of 27 June 2013);

- The implementation of the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3, OJEU no. C 41 of 14 February 2012);

- The legal framework for the implementation of the Recommendation of the European Systemic Risk Board of 4 April 2013 on intermediate objectives and instruments of macro-prudential policy (ESRB / 2013/1, OJEU no. C 170 of 15 June 2013).

We remember that there has been an attempt to regulate the same sector by Emergency Ordinance, a project released to the public on 8 October 2013 but following the period of public debate, the government did not submit the draft emergency ordinance to the approval circuit (Diaconu, 2014). This occurred even though the European Central Bank welcomed the provisions of that draft emergency ordinance which expressly stated the independence of the Romanian National Bank with regard to macro-prudential policy decisions and the institutional independence of the Committee, in line with Article 130 of the Treaty (ECB Opinion CON/2013/39 of 3 June 2013). From the text of the draft emergency ordinance in question it results that a Committee (without juridical personality) is endowed to ensure the coordination of the national macro-prudential supervision. Named the National Committee for Macro-prudential Supervision (NCMS), this institutional structure will act as macro-prudential authority as stated in the Recommendation of the European Systemic Risk Board of 22 December 2011 on the macro-prudential mandate of national authorities (ESRB/2011/3).

In exercising its powers, the Committee also acts as (PL, 2014):

- Designated authority according to the provisions of Sections I and II, Chapter 4 Title VII of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

- Designated authority according to the provisions of Article 458 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

The secretariat of the Committee shall be provided by the Romanian National Bank. The fundamental objective of NCMS is to “maintain financial stability, also by strengthening the capacity of the financial system to withstand shocks and by reducing the accumulation of systemic risks” (EM-B, 2014). The attributions of the NCMS are: to develop the strategy on macro-prudential policy, to identify the risks affecting the financial stability, to identify the systemically important institutions, to issue

recommendation/warnings to prevent/mitigate the risks etc. The recipients of the recommendations are either the RNB and FSA, as financial sector supervisory authorities, or the Government. Following receipt of recommendations/ warnings, recipients are required to take the measures recommended or take action to mitigate the risks to which they were warned. However, the NCMS will also have responsibilities in the coordination of the management of financial crises, by issuing recommendations with regard to the establishment of the measures necessary to reduce the risk of contamination if the participants in the financial system face difficulties with systemic impact. The decisional body of the NCMS is the General Council, composed of nine members. They are: the governor (as chairman), the first deputy governor, the two deputy governors and the chief economist of the National Bank of Romania, the President and the Vice President of the FSA, as well as two representatives of the Government. The organizational structure also includes two support committees, namely the Technical Committee on systemic risk and the Technical Committee on financial crisis management. The decisions of the General Council are adopted by majority vote, and in case of a tie, the chairman has a decisive vote (and not as in the previous project, when “in the event of a tie, the Governor of the National Bank of Romania has veto power” (Diaconu, 2014). The NCMS issues an annual report to be presented to the Parliament by its chairman.

3. The need for legal protection of the Committee and its staff

According to Recommendation ESRB/2011/3, the Member States must ensure the legal protection of the Committee and its staff. Among other things, the persons concerned “shall not respond civilly or criminally for the fulfillment or failure to fulfill any act or fact related to exercise-related activity of the NCMS when they acted in good faith”. Then, the same people “neither seek nor accept instructions from any authority, institution or public or private body”. What is particularly significant is the fact that the initiator of the act found it necessary to introduce the provision stating that “the activity as a member of the General Council does not entail a state of incompatibility or conflict of interest in the meaning of the statutory provisions”. The explanation of the compatibility, although quite predictable, is found in the Explanatory Memorandum (EM-PL, 2014). To understand that there can occur no conflicts of interest, here it is stated that “the activity within the General Council of the Committee of the representatives of the NBR, of the ASF and of the Government, represents an extension of the activity exercised within each authority according to their statutory attributions of maintaining the financial stability at the sectorial level, which pursues the objective of ensuring the macro-prudential stability of the entire financial system, by the involvement and coordinated action of the authorities represented by those persons”.

4. Conclusions

Designed to ensure the macro-prudential oversight of the financial system aiming towards an optimal functioning, the National Committee for Macro-prudential Supervision plays a special role. In our opinion, the establishment of an appropriate legal framework in the sector, according to the European standards, would enable an effective coordination of this type of supervision, facilitating the accomplishment of the objective of the Committee, also by strengthening the capacity of the financial system to withstand shocks and by reducing the accumulation of systemic risks. Beyond this, in support of expediting the enactment of the sector referred to in this paper, we mention the fact that among the attributes of the Committee is also included the capacity to issue recommendations for ensuring the national implementation of regulations, decisions, guidelines, guidelines issued by European institutions/bodies in the sector of macro-prudential supervision.

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