

ROLE OF THE DIRECTIVE NO. 36/2013 AND REGULATION NO. 575/2013 IN THE EVOLUTION OF CORPORATE SOCIAL RESPONSIBILITY

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Abstract: *Over the recent period, one can see the development of the legislation – at both European and national level – corresponding to the enactment of corporate social responsibility in varied special fields. In this paper, we have analyzed the RSC-enactment legislation in the banking field, recently adopted at the level of the European Union. These European normative acts are the most recent part of the evolution of corporate social responsibility.*

Key words: *CSR, banks, consumers of banking products and services, directive, regulation, juridical analysis.*

1. Introduction in Corporate Social Responsibility

Juridical norms belong to a broad category of norms, i.e. social norms.

The evolution of juridical norms emphasizes their ethical origin.

Morals include all behaviour rules of the people. Law includes all the social conduct norms being fulfilled when needed by the constraints of the state. Morals, as compared to law, are the *genus proximus* of the law.[4]

It is considered that social responsibility can also be regarded as a fundamental ethical principle which expresses towards “whom” and for “what” an economic operator is responsible, in the light of the ethical system it accepts and promotes. From this perspective, social responsibility implies: the compliance with the laws,

with the contractual provisions – starting from the premise that the contract is the law of the parties which obliges them to comply with it –, honesty, but also the consideration of desiderates of several groups interested in the existence and operation of a commercial company. [7, pp. 145 – 147]

At present, the social responsibility of economic operators must be regarded from a complex perspective. We consider that the social responsibility of the commercial companies is what the community expects from an economic operator ecologically, economically, legally, ethically and philanthropically. In my opinion, social responsibility includes all these types of responsibilities: ecological responsibility, economic responsibility, legal responsibility and philanthropic responsibility. [6, pp. 85-99]

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2. The role of normative acts adopted at European Union level in the Romanian legislation

In the field of corporate social responsibility, at EU level regulations and directives – normative acts of a binding nature for the Member States or their citizens have been adopted so far, as well as resolutions – normative acts of a recommendatory nature.

We consider it necessary to briefly explain the most important European normative documents adopted by the competent European institutions, normative documents including the European juridical norms. The most important normative documents adopted by the European institutions are: the regulations and the directive.

Regulations create rights and obligations which the private persons – natural persons and legal entities – can use in their relation to the national authorities and in relation to other private persons. The regulation of the relation between private persons and national authorities is called a direct vertical effect of the regulations. The regulation of the relation between private persons is called horizontal direct effect of the regulations.

The regulations are the most effective and complete documents of all the legislative instruments at the disposal of the community institutions. [1, p. 108] The regulations are applied to all the persons who are in their range of application. Thus, these normative documents create obligations both for the state, and for the commercial companies which perform their activities on the territory of the respective member states of the European Union. The regulations create subjective rights in favour of the private persons, of the member states citizens, both natural persons and legal entities. Therefore, European regulations can create rights and obligations in favour and for the task of the consumers, but also of the commercial

companies from a European Union member state.

As compared to regulations, *directives* have an obligatory force only for each member state to which they appeal as regards the result to be achieved. [4, p. 26] Thus, obligations can be imposed to the community member states. For this reason, it can be stated that the addressability of directives is limited. Consequently, these community normative documents cannot be invoked in the relations between private persons, but only against a member state to which they are addressed; they cannot impose obligations to persons, as the regulations can.

The directive is endowed only with a limited normative force, as compared to community regulations. The obligation which it creates for the member states only extends over the *result to be attained*. The *result to be attained*, requiring the mandatory character of the directive, leads to the modification of the national legislations or the adoption of legal provisions in the field that is its object. However, the directives give national authorities the possibility (competence) to choose the forms and means to apply these directives. [1, p. 110]

The directives are adopted with the purpose of promoting the harmonization or coordination of the national legislations. The tendency of these documents is to limit, in certain fields, the authority of the states, especially regarding the juridical protection of the European Union member states citizens. Thus, directives impose to the states obligations to do something specific, restrictions or interdictions. [2, pp. 166-177]

3. Juridical analysis and economic implication of Directive no. 36/2013 and Regulation no. 575/2013 in the field of Corporate Social Responsibility

The compliance with the judicial responsibility, component of corporate

social responsibility, is very important. In terms of law enforcement and observance, a socially responsible attitude supposes the observance by economic operators, at their own initiative, of the legislation in force, regardless of the control exercised by the authorized public bodied entitled thereto. [3]

The legislation is thereby part of corporate social responsibility, being included in judicial responsibility. However, there are normative acts that set the juridical frame corresponding to the institution of corporate social responsibility, tracing the enactment directions for this concept at a national, European and even global level.

In what follows, we will analyse the legislation that is part of the CSR juridical frame at the level of the European Union. We have specified that we will analyse only part of the legislation adopted at the level of the European Union, i.e. the most recent one.

Despite their not having a general nature, Directive no. 34/2013/EU, together with Regulation no 575/2013 apply CSR - essential elements in the banking field, having a social impact both on banks and on the consumers of banking products and services, within the European Union's Members States.

It is worth noting that corporate social responsibility is being used in a field where the economic operators of the highest power and influence, i.e. banks, are active.

We might believe this category of economic operators have a power that goes beyond the barriers of a single European State; yet, the European Union's central agencies have found a way to control banks, resorting likewise to essential elements inherent to the institution of corporate social responsibility.

In addition to Directive no. 34/2013/UE of the European Parliament and of the Council on the

annual balance sheets, the consolidated financial statements and the related reports of certain types of enterprises, at the level of the European Union other two normative acts were adopted, having consequences for the field of corporate social responsibility. We refer to Directive no. 36/2013/EU and to Regulation no. 575/2013. In what follows, we will analyse these two European normative acts.

On June 26th, 2013, Directive no. 36/2013/EU of the European Parliament and of the Council was adopted [12], upon the access to the activity of the credit institutions and upon the prudential supervision of the credit institutions and of investment companies, upon the modification of Directive no. 87/2002/CE and abrogation of Directives no. 48/2006/CE and 49/2006/CE. *The normative acts regulating the distinct field corresponding to the consumers of banking products and services, which were in force at the time, did not mention the creditors' social responsibility, but Directive no. 36/2013/UE of the European Parliament and of the Council deals with the aspects of CSR, even from its preamble. We dare say one must likewise consider, in analysing the evolution of corporate social responsibility, the special fields of application of corporate social responsibility, especially the social responsibility of the banks – a highly influential category on the stage of the European Union's Member States, with deep implications in the current global economic crisis, laying the stress mostly on the relation between banks and the protection over the consumers of banking products and services.*

Directive no. 36/2013/UE of the European Parliament and of the Council stipulates [8] that “the enhanced transparency as regards the activities of the institutions [financial, *including banks*]

and especially as regards the profits derived, the taxes paid and the grants received, is essential for regaining the Union citizens' trust [including consumers] in the financial sector. Therefore, the compulsory reporting in the aforementioned field is deemed an important element for the corporate responsibility [CSR] of the institutions [financial, *banks inclusively*] towards the interested factors [*stakeholders*] and towards society [*community*].”

The negative experience from 2013, in Cyprus – of the abuse on the consumers of banking products and services, who had opened deposits in the respective country's banks – led, in our opinion, to the adoption of these European legal tools. Note that the transparency of the banking activity, by real integration of CSR in bank management might have impeded that unjust situation towards the consumers of banking products and services, both in Cyprus and in other countries, in the global context of the current economic crisis. The compulsory reporting of the socially responsible results and activity may create, in the view of Directive no. 36/2013/UE, a new and real connection, between banks and one of the most important categories of stakeholders: consumers.

Directive no. 36/2013/EU of the European Parliament and of the Council continued by stipulating [9] that “some deficiencies in the corporate governance [*socially responsible management*] of a number of credit institutions [*of the banks, inclusively*] contributed to their taking excessive and imprudent risks in the banking system, which led to the bankruptcy of the individual institutions and to systemic problems, both at the level of the Member States, and worldwide. The dispositions, in very general terms, as regards the governance of the institutions [financial, *inclusively banks*] and the non-binding character [*voluntary*] of a

significant part of the corporate governance frame [RSC], essentially based on voluntary codes of conduct, sufficiently encouraged the efficient enactment of sound practices of corporate governance [CSR] by institutions [financial, *banks inclusively*]. In some cases, the absence of efficient control mechanisms within the institutions [financial, *banks inclusively*] resulted in the lack of efficient supervision of the decision-making process, which encouraged the administration strategies focused on short-term and highly risky objectives. The unclear role of the competent authorities in supervising the corporate governance systems [CSR] of the institutions [financial, *banks inclusively*] did not allow an efficient supervision of the efficiency in the internal governance processes [*within the banks*].”

We consider that the excessive and imprudent risks taken in the banking sector, as well as the systemic problems – to whose undertaking the banks contributed – both at the level of the Member States, and worldwide, whereto the aforementioned European provisions make reference, are related to the emergence and continuance of the current global economic crisis. These provisions of Directive no. 36/2013/EU of the European Parliament and of the Council come to the support of the beneficial and preventive role inherent to the socially responsible attitude of the banks. The references, in the text, to various tools afferent to CSR – to the ethical or conduct-related codes – together with assessing as inadequate the voluntary character – promoted until recently by the normative acts adopted at the level of the European Union – come to the support and validation of our opinion towards the necessity to develop CSR in the activity of all economic operators and especially of the banks, which – as currently noticed –favour the idea of RSC.

Directive no. 36/2013/UE of the European Parliament and of the Council continues by making reference [10] to the diversity policy implemented by the draft of Directive no. 34/2013/EU. In this way “this phenomenon is caused, inter alia, by a lack of diversity in the constituency of the managing bodies [of the banks]. With a view to supporting independent opinions and critical contestations, the composition of the managing bodies of the institutions [financial, banks inclusively] should be sufficiently diversified in terms of age, gender, geographical origin, education and expertise, covering thereby varied opinions and types of expertise. The balance in gender is particularly important, in order to secure the population’s adequate representation. Especially the institutions [financial, banks inclusively] that do not fulfil the representation threshold of the sub-represented gender should primarily take the adequate steps. The employees’ representation in the managing bodies might likewise be seen as a positive manner to enhance diversity, by its adding a key perspective and genuine knowledge of the institutional internal functioning [financial, banks inclusively].”

With respect to the second normative act, *Regulation no. 575/2013 of the European Parliament and of the Council [13], upon the prudential requirements for credit institutions and investment companies, and upon the modification of Regulation (EU) nr. 648/2012, this one completes Directive no. 36/2013/EU of the European Parliament and of the Council, as regards the aspects of social responsibility in the sector of financial institutions, hence of banks. To this effect, Regulation no. 575/2013 of the European Parliament and of the Council stipulates [9] that “the deficiencies of corporate governance [CSR] of a number of institutions [financial, banks inclusively] contributed to their excessively and imprudently taking*

risks in the banking sector, which led to the bankruptcy of several institutions and to systemic problems” Therefore, “with a view to facilitating the monitoring of the corporate-governance practices [CSR] of the institutions [financial, banks inclusively] and to improving the market discipline, the institutions [financial, banks inclusively] should render public [by CSR reports] the measures adopted in terms of corporate governance [CSR]. Their managing bodies should approve and publish a statement whereby the public [stakeholders, including consumers of banking products and services] be assured of the adequacy and efficiency of these measures”.

The solutions submitted by Regulation no. 575/2013 of the European Parliament and of the Council seem adequate in the current international context.

4. Conclusions and proposals

Once the directive and the Regulation, previously analyzed, were adopted one can clearly see the direction followed by the European Union’s central institutions: CSR development and its integration in various fields. This direction, recently initiated, will lead, in the foreseeable future, to the development and integration of social responsibility in various fields, such as, for instance, the protection of the banking product and service consumers, throughout all European Union’s Member States, including Romania. In this way, we estimate that, in a short time, in Romania, normative acts developing CSR in the activity of the economic operators from different fields will be adopted.

We dare say this implementation of CSR in various special fields, an implementation supported by legislation, is the next essential step in the evolution of CSR..

Note that the beginnings of the enactment of the social responsibility in various special fields were represented, at

the level of the European Union, by bank management, which is a category quite difficult to control, yet – as shown by European regulations – not impossible to control.

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