

PRUDENTIAL REGULATION AND SURVEILLANCE - ESSENTIAL ELEMENTS OF THE BANKING ACTIVITY

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Abstract: *Without being an exhaustive study, the analysis aims to identify the intrinsic correlations of essential notions for the banking field - prudence, prudential supervision, international publishing and sanctions, quartered obviously in risk area. We mention that risk, as related to surveillance and caution, represents the possibility of potential, expected or unexpected events to have a negative impact on the bank capital or the bank revenue. We will not use the notion of control, which seems included in that broader surveillance, but we remind that a prudential supervision aims at preventing internal or external risk at a credit institution level, and at avoiding their spread. Macroeconomic prudential supervision is an internal management activity, given the evolution of constraints that come from outside, the change of activity place or the redefinition of prudential rules at national and international level.*

Key words: *bank, regulation, bank surveillance, publication, sanctions.*

1. Introduction

The Central Bank remains the supreme authority in banking supervision, performing this activity through the Supervision Committee and the Department of Surveillance of the National Bank of Romania. This is the case of the supervision of central banks, along with the supervision performed by each bank at internal level.

The Supervision Committee is a permanent, deliberative and decision-making structure, consisting of ten members and led by the Governor of the National Bank of Romania. His duties and powers aim at monitoring and evaluating the credit institutions' activities in terms of asset quality, financial performance and their classification in the regulated level of

bank prudence indicators, but also at ensuring the regulatory base, according to the specific legislation and international practices in the field.

Commercial banks are autonomous entities that carry out an activity for profit within the laws of the country. Unlike other types of banking business, banks are entrusted with money resources by other companies and by the population, so regulations for banks are more severe, more rigorous, but they apply the general principles governing the market economy. Requirements on the banking activity impose the regulation of specific issues concerning both the authorisation and the operation, and also ceasing the bank activity. This enforcement originates in the

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objectives pursued by the National Bank of Romania.

2. Publication. Publication requirements To ensure uniformity and comparability of published information,

the *Committee of European Banking Supervisors* (CEBS) has developed a web structure for standardized disclosure requirements, addressed to the supervisory authorities of the Member States, and has published general instructions necessary to implement this common approach (CEBS Guidelines on Supervisory Disclosure). As of January 1, 2011, the European Banking Authority (EBA), established by Regulation (EC) nr.1093/2010 of the European Parliament and the Council from 24 November 2010, took over all responsibilities of the Committee of the European Banking Supervisors. Thus, the important role of prudential supervision transparency was emphasized both by the Basel Committee on Banking Supervision and the provisions of the new European legislation (Directive on the taking up and pursuit of credit institutions - 2006/48/EC and Directive on the capital adequacy of investment firms and credit institutions 2006/49/EC). Article 144 of Directive 2006/48/EC stipulates explicit disclosure requirements for the supervisory authorities of Member States.

The legal instruments that ensure the bank prudence in publication are contained in the following regulations:

- Laws and regulations that ensure the adoption of the provisions of Basel II in Romania, gathered in Directives 2006/48/EC and 2006/49/EC. These documents present the legislative and regulatory in the prudential field, subject to the prudential supervision of credit institutions in Romania.
- Specifications and instructions issued to establish a unitary application of new

legal provisions by the supervised institutions.

- Guidelines that include explicit requirements of transparency provided by the two directives, and detailing the application and compliance with new legal provisions.
- Reporting requirements that include information on key issues regarding the implementation of the financial reporting (FINREP) and prudential reporting system (COREP).

In addition, Directives 2006/48/EC and 2006/49/EC contain a significant number of options (to the supervisory authorities or institutions subject to supervision in a Member State) the exercise of which depends on each country.

The Central Bank shows how to exercise, within the national regulators' frame, under Directives 2006/48/EC and 2006/49/EC and cases of mutual recognition of various treatments related to the exercise of these options by the other Member States. In addition, the supervisory authority provides tools for performing the prudential supervisory, the general criteria and methodologies used in Romania, in the process of verification and evaluation (SREP), minimum requirements for the internal processes for assessing capital adequacy to risks (ICAAP) that must be held by the supervised institutions and policies on supervisory measures for certain situations and / or institutions.

The obligation for the bank to make information public will be materialized by reporting statistical data. They refer to aggregate statistical data on the implementation of the prudential regulatory framework in Romania. Tables to be published will include information on Romania's banking sector, credit risk, operational risk, market risk and brief information on actions and measures taken by supervisory authorities. BNR reserves the right to omit certain items from

publication if they are private or confidential.

3. Prudence and International sanctions

The National Bank has the following powers in relation to international sanctions, the financial-banking incidents:

- supervises the implementation of international sanctions, in accordance with Article 17. paragraph (1) of the Emergency Government no. 202/2008 on the implementation of international sanctions, approved by Law no. 217/2009;
- publicizes documents which establish binding international sanctions in Romania, in accordance with article 5. paragraph (1) of GEO nr. 202/2008;
- adopts specific regulations for monitoring the implementation of international sanctions;
- provides specific measures and penalties for non-compliance legislative incidents;
- participates, through appointed representatives, to the Inter-institutional Council working sessions, established under the provisions of Article 13 of Government Emergency Ordinance nr.202/2008 on the implementation of international sanctions.

Sanctions to impose restrictive measures within the areas of activity are established by legal instruments adopted by the Security Council of United Nations (UN), the European Union (regulations and decisions), other international organizations or by unilateral decisions of Romania or other countries and aims, in blocking funds and economic resources, trade restrictions, restrictions on operations with products and technologies with dual travel restrictions, restrictions on transport and communications, diplomatic sanctions, or scientific and technical fields, cultural fields or sports. European regulations on institutions in the area of regulatory /

oversight of the central bank have the regulating purpose of imposing restrictive measures against certain persons and entities under a state or not.

The updated list of states, individuals, groups and entities subject to sanction regimes adopted both by UN and the EU is available on the Ministry of Foreign Affairs website. We exemplify by the following acts in the field: NBR Order no.340/2010 on the unitary model of reporting blocked funds and economic resources or Order no. 95/2011 of the President of the National Office for Preventing and Fighting Money Laundering on approving the methodological norms for making notifications and processing requests for authorization to carry out financial transactions.

In the supervision activity of international banking groups, NBR cooperates with other supervisory authorities through working structures established at European level and relevant substructures within them. They are the Banking Supervision Committee (BSC), established by the European Central Bank (ECB), the Committee of European Banking Supervisors (CEBS), established by the European Commission under the Lamfalussy structure, the Committee of Experts on-the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval) established by the European Council. Banking supervision, in general, is the system used by the state to ensure the financial system stability. To have an effective banking supervision, it has to propose some well-defined and explained goals, which will determine the economic policy, and those who directly perform the banking supervision.

4. Conclusions

There are two tasks underlying all banking supervision systems: to ensure the

balance of the banking sector, to enhance and support the economic growth of the country, protecting the funds paid to the bank.

Thus, prudential regulation (preventive) and surveillance remain essential banking elements. Supervision, as a monitoring activity of credit institutions and checking how banking regulations are complied with and applied aims, through prudential regulations, to ensure the efficient allocation of resources, to minimize risks and ensure stability and financial health for each bank and banking system as a whole.

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