

The Evolution of the Romanian Capital Market Regulation Post-Crisis

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Abstract: This paper is primarily concerned with the role and influence the crisis has played in the development and/or modification of the regulatory framework for the capital market in Romania.

The previous time period has seen the capital market regulation in Romania characterized by two separate, although inextricably linked, processes that have occurred in our country over the course of the years prior to the crisis and have productively coexisted – the preparation for EU integration and the development of the infrastructure for the emerging securities market and of a regulatory framework to govern capital market transactions.

While the accession process from the regulatory point of view reveals that this process has largely focused on the formal adoption of EU legislation by Romania, and that the *acquis communautaire* in the securities field had been fully transposed, the degree of harmonization exceeding that of many of the EU 15 countries, the capital market in Romania was not prepared for any types of crisis, let alone one of such a magnitude.

Even though the oversight from the EU during the accession process played a key role in the establishment of a stronger securities regulator in Romania, the transposition process only served at superimposing the European regulatory platform over the Romanian national market, bringing along for the ride the same weaknesses – lack of early warning systems, micro and macro prudential policy, and so on.

This paper will attempt to present what regulatory additions and/or changes have been made to the national framework in the post-crisis era, and whether or not they were influenced or had anything to do with the crisis.

Key words: Capital Market, Regulation, Crisis, Role, Influence

Capital market, as an effective and self-sustaining structure, did not exist in the state-planned economy of Communist Romania, nor immediately after the events of December 1989 and during the early years of the transition to a functional economy. Hence, there was effectively no knowledge of, or experience with, financial sector regulation and supervision in Romania at the start of the transition to a market economy¹. Scholars and practitioners have concluded that the creation of a capital market, as well as the corresponding regulatory infrastructure from the ground up, as Romania has been forced to do, is a complex process that takes many years, if not decades, to complete².

Romania's intention to join the EU has only increased the pressure to rapidly develop the infrastructure for a capital market. As a prerequisite for EU membership, Romania had to adjust its legislative and regulatory framework to the EU standards.

Given the underdeveloped state of Romania's financial sector, the EU was forced to assume a more active role in the development of institutions that underlie a mature securities market that it had in previous cases of accession, and comparable only to its involvement in the accession of the other CEECs (Central and Eastern European Countries – Hungary, the Czech Republic, Poland, Estonia, Latvia, Lithuania, Slovakia and Slovenia).

Notwithstanding its continued reliance on the classical method, the EU has recognized that as transition economies, the CEECs (Romania as well) present a different set of challenges for the pre-accession period that the states involved in prior round of enlargement. In particular, the EU shifted its pre-accession strategy away from an exclusive reliance on the adoption of the *acquis* and devoted more attention and resources towards the development of an adequate regulatory structure within the applying countries³.

¹ Karel Lannoo, Financial Sector Regulation in CEECs and EU Accession, in EUROPEAN UNION ACCESSION: OPPORTUNITIES AND RISKS IN CENTRAL EUROPEAN FINANCES 295 (WORLD BANK, 2000)

² Lannoo, The Emerging Regulatory framework for Banking and Securities Markets in the CEECs, in THE CAPITAL MARKETS IN CENTRAL AND EASTERN EUROPE 85 (Michael Schröder ed., 2001).

³ David Brenneman, The Role of Regional Integration in the Development of Securities Markets: A Case Study of the European Union Accession Process in Hungary and the Czech Republic, p. 29

Regarding the European directives adoption and implementation process, initially an attempt was made for this process to be done only partially, by adapting the European directives to the specificity of the Romanian capital market. This attempt ended in a not so successful way, both formally and process wise (these initiatives did not succeed in producing the desired effects, being less effective in the areas they were designed to act). This flawed initial attempt represents in reality a blessing in disguise and a great opportunity for the Romanian market; had the specific/partial adoption succeeded, a pseudo-harmonized but functional system would have been created, a system that would have nevertheless required subsequent tempering with and transformation, slowing down the overall process, and even more, affecting the companies acting on the capital market, reducing their strength and competitiveness, and affecting the general image and trust in the entire process.

In time, what with the experience gained, the understanding and perspective on the regulatory framework requirements evolved, and Romania succeeded in setting out a mature legislative framework, moving to a formal and total adoption of the *acquis* in order to achieve a completely harmonized regulatory legislation. The result of this process exceeded all expectations, to the extent that Romania surpassed most of the initial 15 EU members regarding the harmonization of the securities market legislation. There is a double significance to this context: on one hand it can be seen that EU's attitude in this matter is not exactly impartial and equidistant, the strictness of its position differing from country to country, and on the other, and this is in our opinion more relevant, it represented a chance, an advantage Romania hold against the other member states, provided the knowledge to use it existed and would have been used.

Romania's transformed and harmonized legislative framework can be witnessed in the OUG 25/2002 (the CNVM act) sanctioned by the L 514/2002, the 297/2004 law and the CNVM acts and regulations. The EU Directives are transposed either in the primary legislation –law 297 – or in the secondary one – the CNVM regulations. This manner of incorporating and transposing the European Directives in the primary and secondary legislation proved to be more dynamic than the simple recreation of these directives in an organic law, giving a better response to the flexibility and transparency requirements of a security market.

This paper is primarily concerned with the role and influence the crisis has played in the development and/or modification of the regulatory framework for the capital market in Romania.

The previous time period has seen the capital market regulation in Romania characterized by two separate, although inextricably linked, processes that have occurred in our country over the course of the years prior to the crisis and have productively coexisted – the preparation for EU integration and the development of the infrastructure for the emerging securities market and of a regulatory framework to govern capital market transactions.

While the accession process from the regulatory point of view reveals that this process has largely focused on the formal adoption of EU legislation by Romania, and that the *acquis communautaire* in the securities field had been fully transposed, the degree of harmonization exceeding that of many of the EU 15 countries, the capital market in Romania was not prepared for any types of crisis, let alone one of such a magnitude.

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The table below is a snapshot of the legislative efforts undergone by the Romanian supervisory body, during the period 2009 – 2013. It is by no means an exhaustive one, referencing only the more notable regulatory initiatives, and summarizing their impact and relevance on the dynamic and development of the Romanian capital market.

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No	Type (primary, secondary...)	Legislative Title	Market Effect
1	Primary	Law nr. 289/2010	Modifies: <ul style="list-style-type: none"> • L32/2000 – insurance market and supervision; modifies procedure, no direct influence on the market • OG 50/2005 – creation and functioning of CSSPP – modifies articles pertaining to the structure of the Commission and procedure – no influence on the market • OG 25/2002 – structure, budget and procedures for CNVM; increased oversight and control powers
2	Primary	Law 151/2014	<ul style="list-style-type: none"> • Clarifies the judicial status of the stock traded on RASDAQ or unquoted securities • Decision whether to admit the trading of stock issued by the company on a regulated market or to be traded on an Alternative Trading System (ATS)
3	Primary	Law 74/2015	<ul style="list-style-type: none"> • Sets the norms for authorization, activity and transparency for alternative investment funds managers • Collective Investment Organisms are included other than “Organismele de Plasament Colectiv în Valori Mobiliare (A.O.P.C.)” – which trade in securities, which have to register with the FSA
4	Secondary	Instruction 02/2009	Sets the internet underwriting and redemption procedure for participation titles issued by investment funds and distributed in Romania
5	Secondary	Instruction 03/2009	Explains how to determine direct and indirect holdings, in order to compute the 33% percentile
6	Secondary	Regulation 12/05 BNR/CNVM	Regarding credit risk for credit institutions and investment firms according to internal rating models
7	Secondary	Reg 22/08 BNR/CNVM	Regarding consolidated oversight of institutions and investment firms
8	Secondary	Reg 09 / 2009	Regarding the supervision of the international sanctions enforcement for the capital market
9	Secondary	Reg 29/10 BNR/CNVM 2009	Regarding the determination of minimal capital requirements for credit institutions and investment firms
10	Secondary	Instruction 02/2010	Regarding IPOs through the trading system of a market/ system operator
11	Secondary	Regulation 4 / 2010	CNVM registration and functioning of SC "Fondul Proprietatea" S.A., and the trading of their issued stock
12	Secondary	Regulation nr. 14/24 BNR/CNVM	For large exposures by credit institutions and investment firms
13	Secondary	Regulation 17/15/2010	For counterparty credit risk treatment for derivatives, redemption, borrowing/lending securities/commodities, credit margin operations
14	Secondary	Reg 16/17 BNR/CNVM	For credit risk diminishing techniques used by credit institutions and investment firms
15	Secondary	Reg 18/16 BNR/CNVM	Regarding credit risk for securitization holdings and exposure
16	Secondary	Instruction 06/2011	Regarding the application of IFRS by authorized entities, regulated and overseen by CNVM
17	Secondary	Reg 14/9 BNR/CNVM	Regarding capital adequacy for credit institutions and investment firms
18	Secondary	Reg 21/13 BNR/CNVM	Regarding credit risk for securitization holdings and exposure
19	Secondary	Instruction	Regarding funds that invest in monetary assets

		01/2012	
20	Secondary	Regulation 06/2012	For the application of art 41 REG (EU) nr. 236/2012 pertaining to short-selling and credit risk swaps
21	Secondary	Regulation 12/2012	Regarding the creation of the institutional framework and authorization for the Gov., through Public Finance Ministry, to auction the greenhouse certificates attributed to Romania
22	Secondary	Instruction 01/2013	To modify and add to I 6 / 2011 regarding the application of IFRS by authorized entities, regulated and overseen by CNVM
23	Secondary	Regulation 03/2013	For the authorization and functioning of the central counterparts for nonquoted derivatives, central counterparts and central trading registries
24	Secondary	Regulation 04/2013	Regarding support stock for certificates of deposit

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