

THE EFFECTS OF THE EU ACCESSION ON THE REGULATION OF THE ROMANIA CAPITAL MARKET

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The positioning of the Romanian capital market within the national, international and European context was and currently is a continuous challenge for public and professional institutions in this field.

The legislation regarding the Romanian capital market was developed in a couple of stages, its benchmarks being the privatization law, the stock exchange law, the set up of the National Commission for Marketable Securities (CNVM) and the start-up of authorizing and controlling the capital market.

The aim of our study is to present a picture of the Romanian capital market in compliance with the EU Directives adopted between 2004 and 2006, but also in 2007. This article shall ascertain the impact of Romania's accession to the European Union on the national capital market, by means of integral harmonization with the European Aquis.

Keywords: capital market, EU accession, accounting regulation

1. Introduction

The capital market aims to transform a state's economy into a progressive one. The Romanian capital market can and has to undertake the role of financial accelerant and engine of economic development. But, therefore it should offer financial products of interest for companies in the viable economic sectors, which would use them for obtaining the financing necessary for development and creation of added value.

All efforts should aim to develop the capital market, to identify the disturbing agents and the solutions for vitalizing the Romanian capital market, and the legislative aspects governing its activity. The general organization and presentation framework for financial products should represent the mentioned accelerator for attracting sources in production and investments, and the means for harmonization with the western requirements in the context of Romania's accession to the European Union.

An efficient legal regulatory framework is a necessity for a stable climate, favourable for the activity of all participants in the economic life, able to attract investments in economy's real sectors. The institutional and regulatory efforts before and after accession were and still are oriented towards the connection to the European exigencies. Here we can mention the following: outsourcing of post-transaction services, set up of the central depository (authorised by CNVM and previously by NBR), set up of the investors' compensation fund, set up of the corporate governing institute and of the compensation fund for operations with derivatives at BVB.

The reform of the capital market legislation and the adjustments for its actual needs and for the compliance with the European Economic Communities standards are a must. Romania's accession to the EU brings some elements, which naturally will improve the forecasts related to the economic future and will bring a significant increase in transactions on the capital market.

2. The European Directives from the point of view of the law regarding the Romanian capital market

The adoption of Law no. 297/2004 regarding capital markets represented a critical moment for the future of the Romanian capital market from the point of view of Romania's accession to the European Union.

Law no. 297/2004 aimed to consolidate the existent legislation regarding capital markets and to adapt it to the provisions of the union's legislation. Law no. 297/2004 ensures the development of the legislative framework necessary for the creation of new institutions, the access of mediators on the Romanian capital market to the unique European market, as well as the set up of a viable capital market, which would allow the transaction of modern financial instruments.

We would like to highlight here the activity of the National Commission for Marketable Securities for lining up the national regulations with the European Directives, achieved by enacting the Regulation for Amending the C.N.V.M. Provisions (December 2006), in order to implement certain provisions of the following European Directives:

1. Directive no. 49/2004/EC regarding appropriateness of the capital of investment companies and lending institutions;
2. Directive no. 109/2004/EC regarding harmonization of the transparency requirements related to information on entities whose marketable securities are admitted for transactions on a regulated market, which amends Directive no. 34/2001/EC;
3. Directive no. 25/2004/EC regarding public takeover bids;
4. Directive no. 72/2004/EC regarding implementation of Directive no. 6/2003/EC related to the accepted market policies, definition of privileged information regarding financial derivatives for merchandise, preparation of the list with the persons who detain privileged information, notification of the transactions made by the management and notification of the suspect transactions;
5. Directive no. 39/2004/EC regarding markets in financial instruments;
6. Directive no. 71/2003/EC regarding the booklets published when marketable securities are made public or when they are admitted for transactions; it amends Directive no. 34/2001/EC;
7. Directive nr. 97/9/EEC regarding the investors' compensation schemes;
8. Directive no. 85/611/EEC regarding the legal, regulatory and administrative provisions related to certain investment trust companies for marketable securities (OPCVM).

The Regulation for amending the CNVM provisions in order to implement certain stipulations of the European Directives brings a series of novelties like the following:

- detailed provisions regarding cross-border operations included in the CNVM Regulation no. 1/2006; it is expressly stipulated that for issuers of marketable securities for which Romania is the origin member state, CNVM will approve the booklets for public takeover bids or for the acceptance to be transacted on a regulated market;
- reports of the issuers whose marketable securities are accepted to be transacted on a regulated market, prepared according to the provisions of Law no. 297/2004 and of CNVM; these reports will also be sent to an official archiving system (set up at national level);
- provisions regarding reporting duties for all issuers whose marketable securities are accepted to be transacted on a regulated market (not only for trading companies issuing shares and bonds);
- annulment of certain articles included in the CNVM Regulation no. 1/2006, which referred to some provisions of the European Commission Regulations no. 809/2004 and no. 2.273/2003, because starting with 1 January 2007 they became directly applicable in the national legislation.

3. Compliance of national regulations with the European directives and regulations

The law of capital markets enacted in 2004 marked the foundation of a regulation package, which should ensure a unitary approach in this field from the view of obtaining the European passport after Romania's accession to the European Union. The national legislation undertook a series of directives related to capital markets, issued by the European Union before 2004, during 1985-2004.

In 2004 CNVM started to prepare a series of regulations based on the law regarding capital markets and on the European Directives.

In October 2004 CNVM approved and enacted two regulations of special importance for the Romanian capital market: Regulation no. 8/2004 regarding the authorisation and functioning of the Investors' Compensation Fund and Regulation no. 9/2004 regarding the appropriateness of the capital of financial investment companies.

The Regulation regarding the authorisation and functioning of the Investors' Compensation Fund (20 October 2004) established the conditions and principles for the set up, authorisation, organisation and functioning of "S.C. Fondul de compensare a investitorilor S.A.". The new entity aims to compensate the investors when the Fund's members are incapable to reimburse the money and/or financial instruments owed to or belonging to the investors.

According to the Regulation, the mediators authorised to provide financial investment services on behalf of the clients and the investment companies administrating individual investment portfolios, which develop activities in Romania, are pledged to participate in the set up of the Fund's financial resources.

The Regulation undertakes elements from Directive no. 97/9/EEC regarding the investors' compensation schemes and, according to CNVM's fundamental objectives, it aims to promote the investors' trust and interests in the regulated markets, in the investments in financial instruments, as well as to ensure their protection against unfair and abusive practices or fraud.

The Regulation regarding the appropriateness of the capital of financial investment companies (22 October 2004) reflects the provisions of Directive no. 93/6/EEC regarding the appropriateness of the capital of investment companies and lending institutions. This regulation introduces new reporting requirements for financial investment companies. They must correlate the undertaken risks with the level of own funds to be hold. Thus, the regulation describes the assessment of the position risk, settlement risk, counterparty risk, credit risk, exchange rate risk, concentration risk, merchandise risk and the calculation of initial capital and own funds to be hold by each financial investment company.

In December 2004 CNVM approved some regulations with particular implications on the activities of entities active on the capital market. They came into force on 01.07.2005. These regulations changed the legal framework valid until 2004 and adjusted it to the provisions of Law no. 297/2004 and of the European Directives.

We refer below to the most relevant changes:

1. The Regulation regarding financial investment services (no. 12/2004) undertook some provisions from Directive no. 39/2004/CE regarding the financial instruments markets, as following:
 - a) the procedures necessary for developing cross-border operations;
 - b) the minimum content of the mediators' internal procedures;
 - c) the guidance principles, which should be respected by mediators in their relationships with the clients;
 - d) the rules regarding fulfilling orders;
 - e) the eligible counterparts;
 - f) the requirements regarding transparency and integrity of transactions with financial instruments;
 - g) the mediators acting as domestic operators;
 - h) the distance contracts and the internet transactions;
 - i) the margin transactions;
 - j) CNVM's co-operation with qualified authorities in member states and third states.
2. The Regulation regarding the appropriateness of the capital of financial investment companies (no. 9/2004) reflects Directive no. 93/6/EEC regarding the appropriateness of the capital of investment companies and lending institutions. This regulation introduces new reporting requirements for financial investment companies. They must correlate the level of undertaken risks with the level of own funds to be hold. The regulation presents the assessment of the position risk, settlement risk, counterparty risk, credit risk, exchange rate risk, concentration risk, merchandise risk and the calculation of initial capital and own funds to be hold by each financial investment company.

3. The Regulation regarding issuers of and transactions with marketable securities (no. 13/29.12.2004) includes in a complex and unitary framework legal provisions related to various topics previously approached in different regulations: the public takeover bid, the public offer for subscription, the continuous and periodical informing through the issuers of marketable securities, etc.
4. The Regulation regarding regulated markets and alternative transacting systems (no. 14/2004) establishes the legal framework applicable to market and system operators, to markets regulated by financial instruments and to alternative transacting systems. The drafting of this regulation considered the new provisions of Directive no. 39/2004/EC regarding markets in financial instruments, as following:
 - integrity requirements for the shareholders of the market operator, which organises and administrates the regulated markets; considering the necessity of insuring a prudent administration of the regulated markets, CNVM can deny the shareholder quality if it estimates that the respective persons could affect the good functioning of the regulated markets or their supervision;
 - qualification and professional experience conditions to be fulfilled by the administrators and managers of the market operator;
 - proper technical endowment of the market operator for managing the risks to which the regulated market is exposed;
 - requirements regarding the mediators' access to the regulated market;
 - acceptance, suspension or withdrawal of instruments for/from being transacted on the regulated market;
 - requirements regarding pre- and post-transaction transparency on the regulated markets and on the alternative transaction systems;
 - compliance with the rules of the regulated market and of the alternative transaction systems.
5. The Regulation regarding authorization and functioning of investment management companies, investment trust companies and depositories (no. 15/2004) reflects Directive 85/611/EEC regarding the legal, regulatory and administrative provisions related to certain investment trust companies for marketable securities. The regulation contains provisions for investment trust companies in marketable securities, for other investment trust companies (AOPC) registered with CNVM, as well as for financial investment companies (SIF). The regulation contains provisions related to the following:
 - authorization procedures for investment management companies (SAI), for open-end investment trusts and for investment companies;
 - conditions to be fulfilled by the shareholders of an investment management company, rules for calculating the net assets;
 - transparency and advertising rules for investment trust companies in marketable securities, development of the activities regarding management of individual investment portfolios on a discretionary basis;
 - conditions and procedures for registration with CNVM, rules regarding the minimum content of the by-laws of a financial investment company, rules regarding the administrators of a financial investment company; and
 - authorization procedure for depositories of assets hold by investment trust companies;

The Regulation regarding the authorization and functioning of the central depository, of the compensation body and of the central counterparty (no. 13) came into effect in 2005. Subsequently it was amended through Regulation no. 17).

According to the Regulation, the central depository performs all depositing operations for marketable securities and any other operations in this respect, as well as the compensation operations, respectively settlement of the transactions with marketable securities. The compensation body performs all compensation operations and settlement of transactions with derivative financial instruments and any other

operations in this respect and calculates the net positions of the mediators, of a possible central counterparty and/or of a possible settlement agent. The compensation body acts as central counterparty.

The central counterparty is the interface between the mediators in the system and acts as exclusive counterparty in respect to their transfer orders. The same entity can be authorised to act as central counterparty both for derivative financial instruments and for other financial instruments.

A new Regulation regarding financial investment services (no. 15/Dec. 2005) was elaborated. The previous one was annulled (Regulation no. 12). The new regulation contains authorization conditions, organisation and functioning conditions for investment companies, but also authorization and authorization withdrawal conditions for financial investment agents, traders and consultants from third countries.

Year 2006 – the year before accession – marked a new stage in restructuring the regulations, which complete the legislative framework of the financial market and, by default, of the capital market. This stage resulted in regulations' annulments, changes and amendments, determined by the Union's rules.

The Regulation regarding financial investment services (no. 15) was amended by Regulation no. 6 (28 Dec. 2006) and by Regulation no. 31 (applicable since 4 Jan. 2007), which refer to the authorization, organization and functioning of financial investment companies, of financial services agents, traders and consultants in the member states.

We should underline that Regulation no. 31/2007 amends the Regulation regarding the issuers of and the operations with marketable securities, thus reflecting the directive, which shows the current European trend in the field of issuers of and operations with marketable securities, as following:

- booklets published when marketable securities are offered to the public or accepted for transactions (Directive 7/2003);
- harmonization of the transparency requirements regarding information related to issuers whose marketable securities are accepted for transactions on a regulated market (Directive 109/2004);
- public takeover bid (Directive 25/2004);
- form and content of the bid booklets, inclusion of the most important information, as well as their publication (Regulation no. 809/2004, issued for the application of Directive 7/2003/EC);
- distribution of advertising materials (Directive 6/2003), definition and publication of confidential information, definition of market manipulation (Directive 124/2003);
- accurate presentation of investment recommendations and disclosure of the conflicts of interest (Directive 125/2003), exceptions regarding the buy-back programmes and stabilization of the financial instruments (Regulation 2.273/2003);
- accepted market practices, definition of confidential information, preparation of the list of persons holding confidential information, notification of the transactions made by administrators, as well as of the suspect transactions (Directive 72/2004).

The amendments brought to the regulation tried to consider the community's regulations and to adjust them (more or less) according to the specific and dynamics of the Romanian capital market, respectively to the complex field of issuers and transactions with their marketable securities. The regulation also introduced and developed new or updated concepts, approached in Law no. 297/2004, as following: acceptance for being transacted on a regulated market or on an alternative transaction system, public takeover bid, qualified investors, and exceptions from the issuance of offer documents, procedure for the shareholders' retirement / withdrawal from a trading company.

There were changes in the Regulation regarding the authorization and functioning of the central depository, the compensation bodies and the central counterparts (Regulation no. 2 applicable as of April 2007). Its elaboration was necessary in order to gather all changes for compliance with the new content of company law (Law no. 31 applicable as of the end of 2006), with some European Directives regarding authorization, organization, functioning and equity of entities on capital markets (appropriateness of the equity size until 2008).

The Regulation regarding regulated markets and alternative transaction systems (14/2004) was annulled and replaced by Regulation no. 2 in March 2006. The latest was also amended (through Regulation no. 14/Aug. 2006 and Regulation no. 32/Feb. 2007 regarding financial services) in order to comply with the

content of some European regulations, like Directive no. 39/2004/EC and the latest EC regulation regarding transactions with marketable securities (1.287/2006/EC), voting rights of the market operators and lining up of the equities of the Bucharest Stock Exchange and the Sibiu Commodity and Derivative Instruments Exchange, during the period 2007–2008.

We do not claim to have presented all the events in the evolution of the regulations regarding capital markets in the context of Romania's accession to the European Union. However, we tried to point out some of them, which we considered representative and with impact on the development of the Romanian financial and capital market.

6. Year 2007 and Romania's major objectives for the next period regarding the financial instruments market and, by default, the capital market

New regulations, with new contents, in compliance with the Union's framework, came into effect in 2007. The first CESR Guide (Committee of European Bodies for Marketable Securities) regarding the unitary implementation of the Directive regarding market abuses was also drafted in 2007. Starting from this guide and considering also the comments, proposals and suggestions gathered during the debate period (up to 20.04.2007), CNVM will implement the directive.

In the context of Romania's accession to the European Union (1 January 2007), the latest Regulation regarding the authorization and functioning of the Investors' Compensation Fund was annulled, replaced and amended in order to comply with the European Directives. The new Regulation (no. 10) reflects the provisions of Directive no. 97/9/EC regarding investors' compensation schemes and it implemented some incident provisions to the European Directives through Regulation no. 31/2006 (applicable since Jan. 2007), as following: appropriateness of the capital of investment companies and lending institutions (Directive no. 2006/49/EC); harmonization of the transparency requirements regarding information related to the issuers whose marketable securities are accepted to be transacted on a regulated market (Directive no. 2004/109/EC, amending Directive no. 2001/34/EC); public takeover bids (Directive no. 2004/25/EC); accepted market practices, definition of privileged information regarding derivative financial instruments for merchandise, preparation of the list of persons holding privileged information, notification of transactions made by the management and of suspect transactions (Directive no. 2004/72/EC regarding implementation of Directive no. 2003/6/EC); markets in financial instruments (Directive no. 39/2004); booklets published when marketable securities are offered to the public or accepted for transactions (Directive no. 2003/71/EC, amending Directive no. 2001/34/EC).

2007 started with the expiration of Romania's deadline for complying with the Directive regarding the financial instruments market. Among the 27 EU member states, only three, inclusive Romania (together with Great Britain and Bulgaria), accomplished this as of 1 January 2007.

From the historical point of view, in the last 15 years, the financial services in the EU did undergo a complex continuous adjustment process. A first programme, introduced in 1992 through the Directive for financial services, was subsequently adapted and amended. It came into effect in 2005. In 1999 EURO was introduced as account currency and in 2002 as physical currency. In 2005 new accounting standards emerged. The new Directive for markets in financial instruments, short - MiFID (Market in Financial Instruments Directive), started to be applied on 1 November 2007.

MiFID aims to liberalize the services circulation, to create a unique capital market in the EU, to increase the competitiveness of financial companies: stock exchanges, investment banks, brokerage companies, assets administrators and other providers of financial services.

Its objectives are the following:

- increase of competition between and inside the European financial markets;
- annulment of the concentration rule (which limits the transactions with securities on the stock exchange of a country) and of the principle regarding the best execution of orders (stipulating that investment companies should take all measures for obtaining the best possible execution results, considering not only the price, but also a complex of other agents); subsequently, this principle will depend on the client's order; should the client not have any specific instructions, the operator will chose „the best possible execution”;
- option for a high harmonization level, with precise provisions regarding contract execution, transaction transparency, clients' eligibility, conflict of interest and internationalization of transactions with shares, bonds and derivatives;

- introducing of the so-called unique passport, which authorizes financial companies to operate in the whole European Union based on the consent of the competent authorities in their home countries;
- creation of the conditions for negotiating shares and bonds within a couple of structures, regardless of stock exchanges or investment companies;

The costs for applying the directive are of EUR 4 – 20 thousands for an operator on the financial market (and for a large operator they can reach even EUR 106 thousands). These costs arise from the fact that the financial companies will have to change their computer systems and control procedures. However, financial services in the EU still remain competitive, meaning that benefits exceed costs. High costs lead to a greater concentration. Large companies absorb the smaller ones, as we can notice in Romania too.

As an impact on the markets, MiFID could announce the end of the Balkan capital markets, being the greatest challenge for the financial services field in Europe in the last years.

Expectations are related to changes of negotiation procedures for shares, bonds and derivatives in the European Union, by means of market liberalization. MiFID will have an immaterial immediate impact on traditional markets, but a long-term impact. Instead, investment companies will be the first affected.

The effects are related to competition increase on the value titles market, which will change the business environment. The transactions volume will continue to increase as a result of a greater market transparency. On the other hand, as the European capital markets integrate, the companies' nationality becomes more and more ambiguous and stock exchanges will compete predominantly on a unique market. It is expected that the increased transparency imposed upon investment companies will attract more investors on the bonds market.

The beneficiaries of the application of the directive will be the operators with available adapting resources and with sufficient financial capacities for bearing the costs, but provided that they act as soon as possible. Also it will be a benefit for stock exchanges, which prepared for MiFID in due time, and for future administrators of pension funds, which are in a continuous growth. Less flexible and offhand companies will lose and suffer.

The professionals, who analysed the directive, highlighted the existence of certain ambiguities related to the following:

- voidance of a clear definition of „best conditions” in executing express orders for clients; accordingly, there are interpretations;
- no accurate method for estimating the transaction costs;
- evasive wording and stuffed text, creating confusions (e.g. financial investment companies are wrongly assimilated sometimes with stock exchange operators);
- despite the presented critical matters, MiFID has material consequences on the Romanian developing financial instruments market, related to:
 - facilitation of the Romanian operators' intra-community activities, possibility of performing operations outside the stock exchange – which will increase competition and reduce transaction costs; and
 - investors' protection by means of imposing upon the Romanian institutions on the market to adopt structures and practices for a better protection, a better information and the possibility the make transactions anywhere in the EU, based on the same regulations; the Romanian investors benefit of the same type of services, for the same price, for the Romanian shares and bonds, as for the foreign ones; internet transactions will be facilitated;

We have to highlight Romania's headmost position in complying with MiFID, marked by dynamic structures and transposition discipline, which brings a fresh breath on the financial instruments market. Unfortunately, its unitary application in all member states is not possible. Up to 1 January 2007, out of the 27 member states, only 3 accomplished the transposition (Great Britain, Bulgaria and Romania).

For Romania, 2007 represented the beginning of the "cohabitation in a new house", with a new dimension, with new and many obligations in various fields. The adoption and implementation of the EU directives regarding the financial instruments market is a priority in the current ascension and development stage of the Romanian financial market.

The architecture of the "new European house" is far from being finalized. Thus, at EU level, the perpetual ideas collation regarding the European construction would benefit if, within the administrative-institutional structure, the fifth market dimension would be more noticeable. The fifth market dimension is the financial instruments market, with the same primary objectives than the first four: barrier elimination, norms simplification, fighting the national preferences and discrimination, penalization of unfair competition practices and especially, harmonization of rules and functioning of national regulatory bodies, in a unitary cogitation flow, as a result of the European Union's multinational polychromic and abundance.

Gathered into a unique reservoir, the European economic thinking could feed the other four dimensions of the domestic market with a medium and long-term business vision. The European Union marks out through its unique formula for harmonizing the countries' interests, despite the polychromic cultures and even the political nuances. The European Union's force in the world consists in the suasion force of its ideas.

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