BABEŞ-BOLYAI UNIVERSITY

LAW FACULTY

SPECIFIC FEATURES OF PATRIMONIAL LIABILITY OF CREDIT INSTITUTIONS

- PhD. THESIS -

SUMMARY

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KEY WORDS: Credit institutions; credit risk, operational risk, the banking market, Banking Directive, European Cooperative Society; deposits on current accounts, current account balances, default risk, commercial risk, Basel I Accord, Basel II Accord, Basel III Accord, Community law, debtor, liquidation, insolvency, courts, Risk of contractual patrimonial liability, Risk of extra-contractual patrimonial liability, tortious liability.

SUMMARY

The theme of the thesis "Specific Features of Patrimonial Liability of Credit Institutions" was chosen based on the belief that, the necessity for appropriate risk-based approach for the banking level is, given the current international crisis, to a small extent comprehended by states and bank managers. The earthquake produced by the current financial crisis, with its epicentre in the heart of the international financial system – the banking industry – required the government intervention on banks for their rescue through massive inflows of funds, partial acquisitions, restructurings, mergers and bailouts, direct or indirect investment banking, the major aim being to stimulate loans and to remove the uncertainties. This situation is caused by modern financial engineering, which, with the help of the new technology enables the creation of highly complex new financial products.

Their aim is to convert an associated asset risk into an asset that will form, later on, the subject of a transaction. If the initial goal was to disperse risk in order to stabilize the markets, the current situation shows that this goal is far from being reached, this constituting an additional reason to justify the title chosen for his PhD. thesis.

Also, another reason why the theme of the thesis was chosen is to study conceptual debates of the past and the present period, means of clarifying and addressing current issues, raised by the evolution of a process of patrimonial banking risk, in an entirely restructuring society which seeks viable and functional approaches.

The complex theoretical apparatus necessary for such an approach is currently rather in the preserve of financial institutions instead of being in the hands of the state. Also, a number of tools and models that apply currently very successful on the financial market still have an unnoticed potential and could contribute to a greater extent to improve bank and national performance, by adapting them, under well established conditions, to other markets - such as the final and intermediary consumption goods market.

Ab initio there is the need to clarify that credit institutions are considered particularly important for economic growth and social welfare. To ensure viability of the banking sector and to reduce the risk of bank failures (whether it is credit risk, operational risk, insolvency, etc.), the industry has been subject to detailed regulation and prudential supervision for many years. Basel Committee on Banking Supervision is the central body that develops and standardizes banking regulations. The Basel Committee on Banking Supervision is a central organ that develops and standardizes banking regulation. The first standardized framework on banking regulation, Basel I, was released in 1988 and the centerpiece of the document was capital levels within the banking industry. The first standardized framework in banking, Basel I, was launched in 1988 and the focus of the document is represented minimum capital levels in the banking industry. In 2007 the framework was superseded by the Basel II Accord, which was supposed to be more risk sensitive and encouraged credit institutions to use internal models to determine capital levels. However, the recent financial crisis demonstrated that the Basel Accords were not robust enough to assess the risks that banks faced.

However, the recent financial crisis has demonstrated that the Basel I and Basel II Accords were not strong enough to assess the risks faced by credit institutions. This position is recognized and supported by renowned scholars in the field, including the author. From this position it is argued the necessity to reconsider the regulation of credit institutions broadly and narrowly, with the

aim of reducing credit risk and insolvency risk at both European and national level, which defines *the actuality of the studied topic.*

As a response to the crisis the Basel Committee released the Basel III framework in December 2010. The new framework was a direct consequence of the large number of bank failures in recent years and the inability of the previous frameworks (Basel I and Basel II Accords) to assess the risks that financial institutions face.

The purpose of the Basel III Accord is to increase the resilience of the financial system and to create a competitive level playing field worldwide. Basel III is an extension of the previous frameworks. However, the capital requirements are stricter and the Committee has also supplemented the framework with specific liquidity requirements.

Since *consensus facit legem*, the proposals from the Basel Committee are legally binding on Romanian credit institutions, and the EU is expecting Romania to adapt the Basel III framework into its own legislation that will be binding for all EU member states.

Hence, *the question* that the PhD. candidate aims to answer is: (Q_1) "In the recent economic and financial crisis which will be the impact of the new European regulation on credit institutions from Romania in terms of the specific features of their patrimonial liability?" An adjacent question is as follows: (Q_2) "To what extent the current legislative framework in Romania and EU counteracts the risk of insolvency of credit institutions?"

The wording of these questions requires a *comparative analysis* on behalf of the PhD. Candidate of the Basel III Accord to discover differences and similarities with previous frameworks (Basel I and II). Moreover, it requires an assessment *de facto* of the capital structure in the largest financial institutions in Romania to determine whether Basel III will change the minimum levels of liquidity and capital.

Therefore, due to the instability of credit institutions in recent years, that has led to the growth of risks within them, *this thesis is considered as actual,*

highly relevant and of interest from: (1) *the regulation perspective* through the analysis and generalization of normative bases targeting credit risk and insolvency risk both internationally and nationally, (2) *the point of view of credit institutions* as a result of performing a comparative analysis regarding their credit risks in the European regulation, namely, in France Germany and Italy, (3) last but not least, the special interest of credit institutions in determining the impact of the introduction of Basel III Accord, which represents a major concern for managers of credit institutions since the start of the official implementation, on 1 January 2013.

Therefore, *the relevance / originality of this scientific research* is basically of three types: (1) empirical - as it brings new data on normative basis targeting credit and insolvency risk both at the international and national level, (2) theoretical – as it proposes a new model for a comparative analysis of existing / known data in terms of the implementation of Basel III Accord and (3) methodological – as it stands for new means of research regarding the current regulatory framework of credit institutions in terms of specific features of patrimonial liability, respectively, from the perspective of the existing legal framework in comparison to the one that is to be implemented.

Additionally, *the motivation for choosing the theme* lies in the small number of specific monographic studies with local character and in practical difficulties encountered in preventing and combating these risks and adverse events from the credit institutions, all leading to the necessity of an investigation of this matter from a regulatory approach. In turn, all these above mentioned call for special researches of legal nature and a scientific assessment highly motivated.

The key concepts of the paper are: the concept of default risk, *credit risk* and *operational risk* concepts, investigated in terms of the regulation of Basel Accords, and the concept of *insolvency* and that of *insolvency risk*.

The object of this study is, on the one hand, determining linkages and interconnections between these concepts and, on the other hand, the

establishment and identification of a coagulant factor, for this multitude of conceptual items, in order to provide a practical finality, to all fragmented regulatory approaches taken so far.

The PhD. Candidate aims therefore, in accordance with the general structure of the thesis *(1) the description of*: general provisions on credit institutions and their activities in Romania and in the Community law; liability for failure to accomplish the obligations to repay the deposits and account balances - consequence of the credit risk; the liability of credit institutions, consequence of the insolvency risk and comparative aspects of the activity risks of credit institutions in European regulation; *(2) the comparison of* the legal perspective and the impact of the Basel regulations at international, European and national level; (3) *the assessment of* the differences and similarities between the regulations in force and those on the verge of being implemented on the patrimonial liability of credit institutions; (4) *the determination of* the impact of new European regulation on credit institutions in Romania in the current economic and financial crisis; and (5) *the identification of* new regulatory solutions for monitoring credit risk in credit institutions in Romania in order to increase their stability.

It is believed that the choice of the object / data research was done so that they can be considered as sufficiently representative (= relevant and useful) to answer to the two research questions: Q_1 "In the recent economic and financial crisis which will be the impact of the new European regulation on credit institutions from Romania in terms of the specific features of their patrimonial liability?" and Q_2 "To what extent the current legislative framework in Romania and EU counteracts the risk of insolvency of credit institutions?"

Thus, the thesis treats in the current context, through a comparative analysis the specific features of patrimonial liability of credit institutions, an issue of great interest, particularly important due to the regulatory changes that occur at international and national levels, with major effects in the regulatory life of every country, and implicitly of Romania.

The actuality of the addressed topic is also conditioned by the fact that researches in recent years, regarding the patrimonial liability of credit institutions, can not fully meet the requirements of the theory and practice of credit institutions in the context of global economic and financial crisis and permanent regulatory changes.

Among the scholars that have an interest in that topic, conducting researches in this respect may be mentioned the following: Markowitz H., Smiths Anthonv, Rossi T., Reisner R., Gregoriu Greg, Walker George, Alexander Born, Pop Liviu, Reghini Ionel, Catană Radu, Țăndăreanu N., Pălulea V., Nemeș V., Gheorghe C., Diaconu Cristian, Miţă M., Florescu C. N. Extensive studies and research have been carried out by Turcu Ion, Ellinger E., Dohm, J., Cassou P. H.

In preparing this thesis have been used various *research methods* given by the specificity of the content of each chapter . There were studied many bibliographic sources from adjacent areas of knowledge such as: civil law, commercial law, international tax law, financial and banking management etc. There were used various specialized dictionaries, documents of the European Council, documents of the European Parliament, of the European Union Council and of the European Commission, reports and studies of the International Monetary Fund, documents of the National Bank of Romania, of various credit institutions in the country and abroad.

Among the national regulatory documents forming the basis of the conducted research can be mentioned the following: the Constitution of Romania, the New Civil Code, the Civil Procedure Code, Laws, Government Emergency Ordinances, Rules and Regulations of the National Bank of Romania etc.

Using the scientific method the researched subject respectively, the patrimonial liability of credit institutions, was approached systematically, to get to tested and transmitted knowledge, to predictions that are truths about this phenomenon. The research has covered various levels considered essential.

Thus, it was clearly identified the field of the operating concepts: credit institutions, credit risk, operational risk, insolvency, and so on, and research questions and objectives have been formulated. The most important phase was covered: data collection, direct research, investigating concrete reality.

Quantitative and qualitative data obtained were analyzed using research techniques appropriate to this theme, namely: *the study of documents and internal regulations, both international and European, statistics, the literature in the filed, reports of institutions and organizations,* etc.

In investigating regulatory phenomena and reforming transformations of the banking system were used, mainly two categories: *classical* methodology and *modern* methodology. Among *classical methods* used, was: *observation* - as a form of gathering general and neutral information - with its variants:

- *Direct observation* through which were analysed recent regulatory aspects on the one hand, of credit institutions and of credit risk, and on the other hand, efforts to implement the new regulatory framework represented by the Basel III Accord both in Romania or Europe, being studied and recorded as objective as possible the most important and meaningful aspects (Chapters 1,2,3 and 4);
- *Indirect observation* was used when findings were made on the basis of previous observations (findings and personal observations);
- *Participant observation* was used when at the point of revealing significant facts of the studied phenomenon, the author got involved directly (chapter conclusions).

Other approaches used were *non-reactive methods* as a group of very different investigation methods, which do not apply to the research of the phenomenon or the process as such, but in researching some of its *consequences.*

The monographic method was used only to describe comprehensive general provisions on credit institutions in EU regulation and in the Romanian regulation, requiring a combination of other methods and practical investigations with scientific analysis because in the field of banking law and taxation law, researches can not be reduced to monograph. Thus, *analysis* was used as obligatory in scientific research because, without it, the research could not draw conclusions on credit risk phenomenon, could not reach any conclusions or any prediction. The *analysis* was done using a variety of techniques focusing on the *consequences* of EU and national regulation with implications on credit institutions and in our case, on *the liability of credit institutions, consequence of the insolvency risk*. This paper also used as methodology the *content analysis,* given the type of research - prevention, control, elimination of credit risk in credit institutions, perceived as extremely actual in the context of the financial and economic crisis.

The process of elaboration of this thesis was accompanied by: documentation researches and participation to conferences in the country and writing of books; presenting of some scientific communications; publishing articles and studies.

Out of theoretical and practical reasons, the thesis was divided into four chapters, demarcated as items of analysis, but which completely perfect themselves as a result of integration and mutual understanding of risk and liability of credit institutions and of the influence that the regulatory framework has on credit institutions.

According to the first criterion TD1, the thesis must be structured so that problematic areas include the following parts: a) content, b) introduction, c) the state of knowledge, d) own contributions, e) final conclusions, f) bibliography, which is therefore fully accomplished.

The content reveals the structure of the thesis, the titles of the 4 chapters, of the 13 subsections of 1st order, of the 23 subsections of 2nd order and of 14 subsections of 3rd order.

The first chapter, “Credit institutions” addresses theoretical aspects of credit institutions in European regulation, while presenting some general considerations on the activities of credit institutions in Romania and the establishment and operation of credit institutions. The general regulation framework of credit institutions is presented both at the European and the national level. This chapter begins from the conceptualization of credit institutions, further reviews the most important Banking Directive and some of the most important legal issues concerning the European Cooperative Society and credit institutions, issues that marked their evolution-over time. Also, there are highlighted changes that circumscribe to the regulatory phenomenon of the New Civil Code regulation regarding the authorization and recording of credit institutions in the contemporary era.

Credit institutions, Romanian legal entities are entities established and operating in according to general provisions and specific requirements established for this type of normative legal subjects.

Out of these, banks have a universal vocation, meaning that the law gives them the opportunity to engage in any of the activities permitted to the category of credit institutions, but only after obtaining the necessary authorizations, respectively, both the one given by the National Bank of Romania and, if there is the need, the authorizations, approvals or permits specifically established by special laws, within the limits set by them.

As shown in the academic literature, banks appear as a guardian of deposits, creating and distributing money, managing means of payment, offering financial services and the banking management involves profitability and prevention, division and cover of risks, the insurance of liquidity.

Except for banks, all other credit institutions have a specialized vocation. This is determined by the nature of the activities that they can develop since they are specialized, for instance, on a particular set of operations stipulated on purpose and restrictively by the regulation.

Credit institutions, among which can be stipulated banks, saving and housing credit banks, mortgage banks with specified boundaries, are organized only under the legal form of a joint stock company, while credit cooperatives have the legal status of the joint stock society. With reference to the incident applicable regulation, there will be applicable the provisions of the New Civil Code in relation to society, whose character is the common law and the provisions of the Government Emergency Ordinance no. 99/2006, which has a special character, with the respect of the principle of special law which derogates from the general and applies with priority.

However, the Community law in general and the banking law in particular has known some significant changes in recent decades. In this context, the Member States are bound to issue appropriate legislation to comply with the regulations established for the integration of financial markets of the Member States. Although it seems that for now the integration has been completed, the main objective of the European Union remains the creation of a single financial market. In this respect, the European Commission issued a special framework for action in the area of financial services.

Regarding the Banking Directive, it is part of the secondary legislation that determines the necessary circumstances for the free exercise of the right of establishment within the banking field and for the providing of financial freedom of services. In an indirect manner it is protected also the free movement of capital, if there will be raised issues related to restrictions of fundamental freedoms.

The jurisprudence of the Court of Justice has not set precise elements on the criteria of separating free movement of capital in relation to the freedom of establishment and the freedom to provide services. Therefore, one can not fulfil a systematic approach that the Court of Justice has in terms of the sequence in which potentially applicable provisions must be implemented in practice. Often, the Court refrains from the analysis of rules regarding the capital movements in relation to national regulations of this type, which are under discussion at a

national court which has made a request for a preliminary decision-making. The Government Emergency Ordinance no. 99/2006 points out the differences in treatment between credit institutions from Europe, which have the right of establishment and freedom to provide services in Romania, and branches of credit institutions from other countries, which are subject to prudential requirements stipulated by law and by regulations imposed by the National Bank of Romania under similar conditions as local credit institutions.

The regulation of credit institutions in EU Member States reflects taking on the principle of single passport for activities through a branch or directly, and the principle of achieving prudential supervision by the competent authority of the Member State of origin. At the same time, the credit institution engaged in any way, in an activity in another Member State must comply with the legislation in force in order to protect the public interest by the host state, as well as local credit institutions. Moreover, methods of organization, when creating a branch will not be contrary to the rules of conduct laid down by the host State on conflict of interest in accordance with Article 36 of Directive 93/22 of the Council of Europe.

In the presented context, banking institutions authorized and supervised by the competent authority of another Member State may perform specific activities in Romania through: the establishment of branches; providing services directly towards a credit institution authorized and supervised in another Member State if the respective activities are included in the authorization granted by the competent authority of the home Member State and ensure compliance with the Romanian regulation adopted with the purpose to protect the general interest.

The expansion of banking activities of credit institutions in Europe from the last decades have revealed that the process of financial globalization has a major impact on banking activities and that national banking systems have already seen a smoothing process based on a model of dominant bank.

Therefore, credit institutions authorized and supervised by the competent authority of a Member State of the European Union can develop in Romania, in accordance with the authorization granted by the home Member State, banking activities and various financial activities through a branch or in a direct manner, without the need to obtain a permit from the National Bank of Romania.

Credit institutions as Romanian legal entities, banks, credit cooperatives, saving and housing credit banks and mortgage banks, are a fundamental component of the national banking system. This position combined with the professional status of the merchant and with the need for the third party to know with certainty a number of factors of statutory and financial nature, have imprinted features on the legal institutions for the identification of credit institutions. In this regard, the attention of the national legislator was always high, as well as the degree of publicity, the objective pursued being that of ensuring a secure environment appropriate for the legal order.

The novelty brought by the Civil Code, consists in the fact that, for the first time it took place the regulation of the legal entity identification attributes that were previously supported only by the doctrine. As in the past, the legislator has considered only mandatory identification elements of the legal entity, even if it does not explicitly nominate a given feature.

In the recent legislative context, credit institutions in their quality of Romanian legal entities are no longer identified only by name, location and nationality, but also through the unique registration code, trade registration number and, in our opinion, also through the registration number from the register of credit institutions.

The second chapter, “Liability for failure to accomplish the obligations to repay the deposits and account balances - consequence of the credit risk,” analyses the bank’s liability for failure to repay deposits and current account balances based on the concept of default risk. During the second chapter are being analyzed and deepened the worldwide Basel Accords.

Credit risk, both for legal persons and legal entities as may occur either as a result of the possibility that recorded revenue decreases or disappears, either because of the manifestation of an intention to defraud from the part of the borrower, depending on those elements, but also on external factors like inflation, the state of the branch of activity in which the borrower operates, the economic and political structure existing at the country level and internal factors: the quality and morality of management, the ability of the company to adapt to market changes, the time of collection of the debts, the creditor bank will establish the level of interest applied. The bank, according to these elements will require safeguards that it deems as necessary and that could provide at least partial recovery of the loan in the future.

As far as preventing the credit risk, this can be achieved by two means: the division of risk and collateralisation. The division of risk implies risk dissipation in such a way that the law of probability could prove the existence of a low possibility for the bank to record a loss. Besides the possibility of establishing credit limits, there is an option for the bank to lend only part of the need for funding if the need is very great or if the involved risk is high, further on, the rest of the funding being sought another bank. In this respect, it can be given as an example the French banking system, in which are found specialized monopolies, made up of several organized banks aimed at funding the same company, to each of them receiving a share of the credit amount allocated.

In conclusion it can be stated that the protection against credit risk materializes in three major directions: risk prevention (through loan and related interest coverage as a result of the economic efficiency of the credited agent); credit risk mitigation through specific credit risk provisions; loan coverage and related interest when the inefficiency of the economic agent is observed, if the risk already occurred, this being called warranty protection.

The third chapter “The liability of credit institutions. Consequence of the insolvency risk”, examines the concept of the legal institution of insolvency in international law, further on studying the legal institution of insolvency in

internal law, the insolvency procedure, the analysis of the insolvency of credit institutions and the risk of contractual and extra-contractual patrimonial liability.

Insolvency is a legal institution emerged necessarily from the development of commodity production and from the proliferation of trade. Typically, obligations are executed in accordance with contractual terms. The insolvency cause is the failure to perform a certain, liquid and due obligation.

Insolvency involves the adoption of corporate governance models for entities in a state of financial crisis. Any legal approach of insolvency should not ignore variables that contribute to corporate governance of sound economic entities. Regardless of the choice that substantive law makes regarding a specific model of insolvency, there will always be economic risks associated with certain options.

In the event of a failure to perform operating under a contract, the economic cycle is not affected. If there is more than one failure of a certain scale, there must be found a solution so that the economic cycle would be the least affected.

Generally, confidence in the performance of an obligation is justified by the existence of a general pledgee, consisting of the pledgor's assets. It is assumed that the pledgor will execute the obligation in nature, and where there will be some lack of performance, the pledgee may require execution by equivalence.

There are law systems in which insolvency operates on both traders and non-traders, and other legal systems in which insolvency operates only on traders.

Insolvency, the second important alternative, appeared later as a consequence of the increasing role of the credit and its importance in the global economy. Insolvency represents the lack of liquidity, being a situation that requires a very long period to maintain itself being sufficient that insolvency persist for a determined period of time according to the insolvency legislation. It

is a continuous state, it requires persistence over a certain period of time, can not be upheld if it is just a temporary state that does not have a continuous character.

First, the international insolvency should imply national interests. National interests in an international insolvency involve a combination of national creditors' interests with those interests of the states. A universal type of regulation norms applicable to international insolvency requires the evaluation of two forces that are: creditors' greed and the pride of the states. Greed is the most difficult to assess because it depends on the relationship between creditors and the place where the debtor's assets are located. The pride of the states could be met by international proclamation of several explicit rules allowing exceptions to the universal distribution of the Member State of origin.

The design of the insolvency proceedings involves a dynamic equilibrium. Excessive protection of debtors leads to the suffocation of the credit market. If debtors know that they can not be effectively sued by creditors, they will not be encouraged to pay and creditors will not be encouraged to lend. The legal system will impose a minimum protection of creditors. No excessive protection of creditors is appropriate, because, in this way, the risk division in favour of debtors will be getting worse and because it weakens the creditors' attitude to engage in monitoring debtors.

The national insolvency procedure is constructed based on the need of reflecting several principles. First, the development of the insolvency procedure after the opening of insolvency proceedings will seek the gain of an efficient outcome in order to maximize the debtor's assets. In particular, a company must be closed, liquidated, sold as a single asset or reorganized under the option that thus it generates the greatest value for creditors, debtors and other interested persons. Second, an appropriate insolvency regime will be effective *a priori*, in the sense that it will prevent managers and shareholders to take imprudent loans and it will prevent lenders to grant loans with a high probability of default. To discourage reckless behaviour at the legislative level, penalties may be

established, which may consist of either debt reduction or the dismissal of those who have such an attitude.

In the last chapter, the fourth, entitled "Activity risks of credit institutions in European regulation. Comparative aspects", it is achieved a critical and comparative analysis in terms of risk of the regulatory regime of the activities of credit institutions in Europe, namely: France, Germany and Italy.

EU Regulation no. 1093/2010 of the European Parliament and of the Council shows that, the consolidated banking directive defines financial institutions, but does not provide a comprehensive regulatory framework. Accordingly, the regulations applicable to financial institutions will be those developed by each Member State, depending on where the entity is authorized to operate, and on the rules of EU law on freedom of establishment and freedom to providing services.

In this context, the analysis of the regulation of credit institutions is the starting point in studying the legal regime of financial institutions. Also, the essential difference between credit institutions and financial institutions is that the latter are not allowed collecting deposits or other repayable funds from the public.

Thus, in France, in the year 2012, different legal standards in banking are encoded in a single act, namely Monetary and Financial Code. This Code sets the regulatory framework for credit institutions and regulates the supervision of financial institutions and the means to solve crises that these institutions experience.

The concept of financial institution specialized exclusively in crediting has distinct rules in the French regulation. In the broader category of credit institutions there is a certain class of entities engaged in lending operations, but which are allowed to receive deposits only under certain conditions.

However, unlike other institutions active in the financial field, credit institutions are the only ones to which the law allows to engage in banking transactions regularly. Additionally, apart from credit institutions and investment firms, the French regulation governs also other financial institutions, among which can be distinguished financial companies and financial institutions. Financial companies are those companies whose subsidiaries are primarily or exclusively credit institutions, investment firms or other financial institutions. Financial companies play the role of holding companies type, subject to consolidated supervision.

It can be said that the broader category of credit institutions contains a subclass consisting of entities called financial corporations, these ones having no ability to accept deposits with a maturity of less than two years. Including financial companies into the class of credit institutions has the effect of applying a more stringent regulatory framework, specific to institutions that accept deposits or other repayable funds from the public. Thus, it is estimated that the French legislation does not have the required degree of flexibility to develop the widest possible sector of lending activities carried out in a professional manner.

In Germany, the German credit institutions are universal, having the ability to provide a wide range of financial services including investment services; there is a close relationship between credit institutions and many non-financial companies in the sense that credit institutions hold significant shares of their capital, or even control these companies; respectively, non-financial corporations hold major shares of the social capital or can even control a credit institution, to the extent to which those companies meet the quality requirements of the shareholding imposed by the supervisory authority of financial services. In Germany, lending can be done only by banks. Thus, the German law does not stipulate a separate category of financial institutions specialized only in crediting. Differences between German credit institutions consist in the typology of shareholders and customers, as well as the operations conducted, but without any administrative restriction regarding their range of activities. Thus, banks can

be private commercial banks, including so-called big banks, regional banks and branches of foreign banks; savings banks, their central bodies dealing with compensation and reimburse operations and other local banks; and industrial and agricultural cooperatives, with a regional entity and an entity that operates at the national level.

Additionally, German regulation does not regulate the term of financial institution specialized in crediting, the crediting activities being conducted only by credit institutions or banks.

In Italy, the market of financial services can be divided into two main sectors: banking sector governed by banking regulation and the non-banking sector. According to the banking regulation, the only entities authorized to conduct banking activities in Italy are banks. Thus, banking activity is defined as accepting deposits from the public and as the lending activity. Attracting deposits from the public is forbidden for any entities other than banks, except for the Italian Post Office.

Financial activities from outside the banking sector are developed by financial institutions and can be divided into two groups: the first group consists of financial service providers which operate in the securities market. Thus, the given category includes investment management companies, Italian investment firms and investment companies with variable capital, meanwhile in the second group are included financial intermediaries, which represent a category of entities that are entitled to provide a wide range of activities such as lending, exchange and payment services.

Financial intermediaries represent a category of financial institutions very similar to Non-Bank Financial Institutions in the Romanian law. The Bank of Italy is responsible for the overall supervision of the Italian banking system. The elaboration of the secondary legislation in banking as well as the monitoring of its implementation is entrusted to the Italian Bank, to the Ministry of Economy and Finance and to the State Treasury. In this context, a significant part of the banking regulations are issued by the Bank of Italy in this category entering

regulations on capital adequacy, risk management, professional conduct, licensing and ownership shares in banks. Additionally, besides the main task of ensuring the stability of the financial system and of its component institutions, the Bank of Italy works as an antimonopoly authority in the banking field.

The paper ends with some conclusions and the bibliography of the research.