other countries, first of all, those who have achieved significant success in this matter. In this case, one should take into account the rapid cycle of development of high-tech products, which necessitates the operative adjustment of the state and the use of the appropriate regulatory means.

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EU POST-CRISIS MEASURES FOR ENSURING CONTROL OVER FINANCIAL INSTITUTIONS

Mg.iur. Cvetkova Irina,
Baltic International Academy, Latvia
Doctoral study program "Legal Science"
e-mail: cvetkova@inbox.lv
Research supervisor: **Dr.iur. Janis Grasis**

Abstract. The global financial crisis of 2008 has clearly demonstrated that the problems of one bank go beyond its structure and its direct counterparties and can spread to the entire financial sector, moreover, they can move from one state to another and go far beyond these countries.

Prior to the global financial crisis several unified normative acts were adopted within the EU to streamline the activities of both organized and unorganized financial markets. However, in the conditions of instability of the financial markets of the European countries, this regulation appeared to be incapable of providing emergency measures for the EU countries.

To ensure financial and economic stability under the conditions of the European Commission, multiple amendments have been made to acts of supranational law, including the ones related to the regulation of the level of capital adequacy and liquidity of financial institutions - participants of financial markets, as well as crisis management of financial institutions.

The work thoroughly examines the amendments adopted by the European Commission after the global financial crisis of 2008 to manage and monitor financial institutions, the appropriate conclusions have been made.

Аннотация. Мировой финансовый кризис 2008 года наглядно продемонстрировал, что проблемы одного банка выходят за пределы его структуры и его непосредственных контрагентов и могут распространиться на весь финансовый сектор, более того, они могут перейти из одного государства на другое и выйти далеко за пределы этих стран.

До мирового финансового кризиса в рамках ЕС было принято несколько унифицированных нормативных актов для упорядочения деятельности как организованных, так и неорганизованных финансовых рынков. Однако в условиях нестабильности финансовых рынков европейских стран это регулирование оказалось неспособным обеспечить экстренные меры стран ЕС.

Для обеспечения финансово-экономической стабильности в условиях Еврокомиссией было внесено множество поправок в акты наднационального права, в том числе для регулирования уровня достаточности капитала и ликвидности финансовых учреждений – участников финансовых рынков, а также кризисного управления финансовыми учреждениями.

В работе подробно рассмотрены изменения, принятые Еврокомиссией после мирового финансового кризиса 2008 г. по управлению и контролю за финансовыми учреждениями, сделаны соответствующие выводы.

Keywords: bank crisis, crisis management, financial instruments, liquidity.

Introduction

The International Monetary Fund (IMF) in its report of 2008 pointed to 124 local national crises with total losses of the global banking system of over $ 300 billion [7].

Financial crisis may be accompanied by some of the features highlighted below:

A demand for reserve money so intense that the demand could not be satisfied for all parties simultaneously in the short run.

A liquidation of credit that has been built up in a boom.

A condition in which borrowers who in other situations were able to borrow without difficulty become unable to borrow on any terms – a credit crunch or credit market collapse.

A forced sale of assets because liability structures are out of line with market-determined asset values, causing further decline in asset values – the bursting of a price “bubble”.

A sharp reduction in the value of banks’ assets, resulting in the apparent or real insolvency of many banks, accompanied by some bank collapses and possibly some runs [8] The effects of the crash are still rippling through the world economy. The collapse of Lehman Brothers, a sprawling global bank, in September 2008 almost brought down the world’s financial system. It took huge taxpayer-financed bail-outs to shore up the industry. Even so, the ensuing credit crunch turned what was already a nasty downturn into the worst recession in 80 years. Massive monetary and fiscal stimulus prevented a buddy-can-you-spare-a-dime depression, but the recovery remains feeble compared with previous post-war upturns. GDP is still below its pre-crisis peak in many rich countries, especially in Europe, where the financial crisis has evolved into the euro crisis.

During the financial crisis many financial institutions have revealed the lack of risk experience and skills at the non executive Board level and the failure in communicating risks to top management. The risk manager task is to identify and assess the risks faced by the company, to communicate these risks to the board of directors and to the Chief Executive Officer (CEO), and to manage those risks. If the reports about risk exposures are too complex or not very clear, then the risk management systems will fail. For example, the Swiss bank UBS, which was very affected during the current financial crisis, tried to explain its subprime and housing exposures in an overly complex way and to the wrong audience [9].

The global financial crisis has clearly demonstrated that the problems of one bank go beyond its structure and its direct counterparties and can spread to the entire financial sector, moreover, they can move from one state to another and go far beyond these countries.

The crisis has shown that the existing systems and national normative acts of the EU countries were not able to effectively manage financial institutions that had difficulties and the banking system was subject to risks that could lead to the bankruptcy of banks [10].

1. Management of financial institutions in times of crisis

In times of crisis, the main task of the EU was to prevent the bankruptcy of banks and other systemic financial institutions, as this could cause significant systemic damage. In November 2008, at the G20 Summit, the leaders of the states decided on the main causes of instability in certain regions of the world [11].

To consolidate the regulation of the financial services market, the EU has come to grips with the creation of the Union of the Capital Market and the European Banking Union in order to create a unified banking supervision system in the EU [12]. It is worth mentioning the post-crisis procedure of de Larosière, which strengthened the role of the European securities and markets authority [13].

In the period from 2008 to 2010 various measures for prevention irregularities in the financial system have been taken by the governments of the EU member states, such as:

1) capital injection,
2) assistance in relief of problem assets,
3) guarantees on liabilities,
4) maintaining liquidity.

According to the European Commission, such interventions in the banking sector should never be repeated. Banks should be able to go bankrupt, like any other business, and the government, in turn, should be equipped with the tools that will allow them to prevent systemic damage to the financial sector [14]. It is unacceptable to expose taxpayers to the risks of covering the costs of widespread economic damage. No bank should be too large or too incorporated for a bankruptcy proceedings.

The first reform in times of crisis conditions turned into Directive No 2009/111/EU on capital requirements (Capital Requirements Directive - CRD II) [1]. CRD II strengthens the supervision of cross-border service providers, increases supervision of financial institutions that are limited to only one counterparty, and places increased demands on asset securitization.

Since 2010, the issue of creating a unified legal regulation in the field of preventing the consequences of the bankruptcy of system financial institutions has been discussed. In this regard, in October 2010, the European Commission published a plan for a new structure of crisis management in the financial sector, providing for the creation of a special European crisis management system [15].

2. The EU normative acts on ensuring control over financial institutions

In November 2010 Directive No 2010/76/EU on capital requirements (Capital Requirements Directive — CRD III) was approved, having increased the requirements towards capital for the re-securitization and the assets that banks keep in their trading books (portfolios) [2].

In 2013 a package of measures CRD IV was approved, which consisted of Directive No 2013/36/EU and Regulation No 575/2013, which were implemented in the European legislation of Basel III [3]. The provisions of Basel III offer new capital standards, leverage - the use of borrowed funds to finance the company's activities, which is characterized by the ratio of the borrowed and own capital and liquidity for strengthening the regulation, supervision and risk management in the banking sector [16].

The Institute of International Finance, a 450-member banking trade association located in the United States, protested the implementation of Basel III due to its potential to hurt banks and slow down economic growth. Further, the American Bankers Association and a host of Democrats in the U.S. Congress argued against the implementation of Basel III, saying that it would cripple small U.S. banks by increasing their capital holdings on mortgage and SME loans.

Directive No 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms provides for the introduction in the EU countries of the Single Remediation Mechanism of Problem Banks (Single Resolution Mechanism, SRM), the introduction of plans to restore financial stability and measures in case of their restructuring.

In May 2014 Directive EC № 2014/59/EU on establishing a framework for rehabilitation and resolution of the insolvency of credit institutions and investment companies (European Union, 2014) was approved. The Directive supplemented and amended Directive No 2013/36/EU, introduced a general mechanism for bankruptcy procedures of banks and other financial institutions, including large investment companies. The Directive is the completion of a plan to reform the financial sector, in accordance with the agreements G20 [4].

In July 2014 Regulation № 806/2014/EU on the transparency of securities financing operations and the reuse of financial instruments was approved [6]. The Regulation is aimed at increasing the stability and transparency of the securities market in transactions involving the use of securities and re-using collateral, requirements have been established for participants in such transactions, the failure to comply with which entails the application of measures of responsibility to such participants by the competent authorities of the EU member states.

As the crisis advanced, its effects spilled over from banks to the real economy. The sovereign and banking crises exacerbated each other especially in Europe, shown most clearly by the Greek sovereign crisis in 2009. The European (sovereign) debt crisis, also referred to as the "euro area" or "euro zone" crisis, made apparent the fragility of monetary union under crisis conditions and the lack of macroeconomic tools for effective intervention. The cross-border exposure of some big European Union (EU) banks to sovereign debt in weaker (peripheral) European economies was quite significant in some countries. The main problem, however, was found in the nexus between (domestic) bank risk and sovereign risk [17].

On the one hand, the measures taken helped to stabilize the financial system in many ways, but on the other hand, they led to enormous spending of public finances and disruption of the balance in the domestic banking market. During the 2008 financial crisis as governments around the world spent almost $1 trillion to rescue their banks from collapse. Despite the lingering effects of the financial crisis in Europe, the continent's banks are still profitable: average return on equity was 6.6% in 2015, according to the International Monetary Fund (IMF), compared to 15.2% in 2006 and 2007.

3. Results of applying measures for controlling financial institutions

In 2014 The European Central Bank (ECB) conducted large-scale stress tests for the 128 largest banks in the eurozone for the first time, 25 of which failed the stress test. Checking the annual balance sheets of these banks revealed a shortage of capital totaling 25 billion euros. Almost half of them increased buffer capital in case of financial crises totaling 15 billion euros, and now there are no complaints about them.

The current stress test of ECB shows that total lending at banks has decreased, and non-repayment of loans continues, particularly in the "PIIGS" countries: Portugal, Italy, Ireland, Greece and Spain. Stress tests conducted by the EBA found that, nearly eight years after the financial crisis began, the continent still harbored at least one bank liable to walk off a cliff in a downturn (Figure 1).

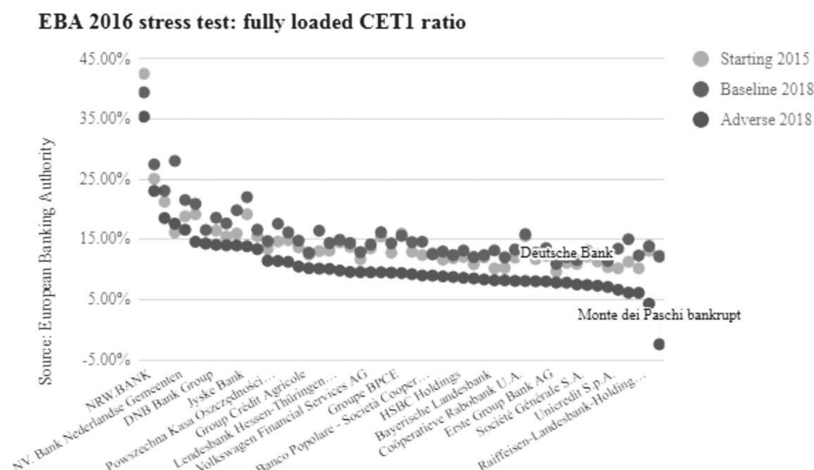

Figure 1: ECB stress test

02 November 2018 EBA published the results of the 2018 EU-wide stress test, which involved 48 banks from 15 EU and EEA countries, covering broadly 70% of total EU banking sector assets. The adverse scenario has an impact of -395 bps on banks' CET1 fully loaded capital ratio (-410 bps on a transitional basis), leading to a 10.1% CET1 capital ratio at the end of 2020 (10.3% on a transitional basis). The objective of the exercise is to assess, in a consistent way, the resilience of banks to a common set of adverse shocks. The results are an input to the supervisory decision-making process and promote market discipline (Figure 2).

As the central data hub for the entire EU, the EBA published the granular bank results, including detailed information at the starting and end point of the exercise, under both the baseline and the adverse scenarios.

	Starting 2017	Starting 2017 restated	Baseline 2020	Adverse 2020	Delta adverse 2020-2017	Delta adverse 2020 – 2017 restated	Starting Leverage ratio	Leverage Ratio 2020
Transitional CET 1 capital ratio	14.5%	14.4%	15.4%	10.3%	-419 bps	-410 bps	5.4%	4.4%
Fully loaded CET capital 1 ratio	14.2%	14.0%	15.3%	10.1%	-416 bps	-395 bps	5.1%	4.2%

Figure 2: 2018 EU-wide stress test

After the entry of new rules for calculating liquidity of banks and leverage ratios in 2018, a number of French largest banks: BNP Paribas, Societe Generale, Credit Agricole, Credit Mutuel, Groupe BPCE and La Banque Postale - applied to the European Court with a claim against the ECB. Banks disagreed with the ECB's demand not to take into account the target deposits placed in the State Deposit and Consignment Fund when calculating the ratio of borrowed funds and total asset value (Caisse des Dépôts et Consignations, CDC). In addition, the ECB flooded the eurozone financial market with cash to stimulate growth, at the same time charging banks for deposit service charges, which led to the increased tension between banks and the regulator.

The European Union's top court annulled an ECB decision demanding that the six banks set aside capital against special deposits they have with state investment institution CDS [18].

Mohamed El Erian considers that there are consequential post-crisis lessons that haven't been sufficiently internalised; and some that were not foreseen at the time of the crisis but are now urgent and important [19]. A summary scorecard of post-crisis accomplishments, unfinished business and unintended consequences is: 1) A safer banking system; 2) A more robust payments and settlement system; 3) Smarter international cooperation; 4) Still-elusive inclusive growth; 5) Misaligned internal incentives; 6) A scarcity of 'patient' balance sheets; 7) The big got bigger and the small got more complex; 8) Risk has morphed and migrated to under-regulated areas; 9) Reduced policy flexibility.

Conclusions

1. The global financial and economic crisis of 2008 caused the need for fundamental changes in the regulation of issues of preventing crisis phenomena in the banking sector, the securities market and the derivative financial instruments market.

2. Changes in legal acts have strengthened the regulatory role of the EU in preventing the instability of financial markets, many regulatory issues have moved from the national to the supranational level, ensuring the regulation of crisis management of financial institutions in the EU countries.

3. The crisis has had a devastating effect on the financial system and economic performance of EU countries, and its effects are still tangible today.

4. At the end of May 2018, financial stability in the eurozone remains favorable, the profitability of banks has improved, but structural weaknesses remain.

5. The EU is continuing to improve the legal framework and in the near future we can expect the unification of the European financial law.

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ISSUES OF LEGAL REGULATION OF SETTLEMENT OPERATIONS OF BANKS IN UKRAINE

Glibko Sergiy,
PhD, Associate Professor, Head of the Scientific and Research Institute of Providing Legal Framework for the Innovative Development of National Academy of Law Sciences of Ukraine, Ukraine, glbksv@gmail.com ORCID: 0000-0003-3398-9276

Annotation. The report is devoted to the definition of the peculiarities of contracts related to the services for the transfer of funds under the legislation of Ukraine and to compare their content with payment services in accordance with the EU legal acts. A larger number of contracts are investigated, which, as a rule, are the basis for settlement and cash servicing. It is confirmed that the use of the terms ‘payment services’ and ‘funds transfer’ in all the contracts in which banks provide payment and related services will bring the Ukrainian legislation closer to the term ‘payment services’, which is used in the EU legislation.

Анотація. Тези присвячено визначенню особливостей договорів, пов’язаних з послугами переказу коштів відповідно до законодавства України та порівнянню їх змісту з платіжними послугами відповідно до законодавчих актів ЄС. Досліджується велика кількість контрактів, які, як правило, є основою для розрахунково-касового обслуговування. Доведено, що використання термінів «платіжні послуги» та «переказ коштів» у всіх контрактах, в яких банки надають платіжні та супутні послуги, наблизить українське законодавство до терміну «платіжні послуги», який використовується в ЄС законодавства.

Keywords: bank, bank account, funds transfer, entrepreneurship, payment services.

With a variety of banking services, their level of development and availability is most often determined by the proper provision of settlement services.

Settlement transactions in Ukraine are regulated by the following normative legal acts: Laws of Ukraine ‘On Payment Systems and Funds Transfer in Ukraine’ [1], ‘On Banks and Banking’ [2], ‘On Financial Services and State Regulation of Financial Service Markets’ [3], ‘On Prevention and Counteraction of the Legalization (Laundering) of the