

PARTICIPANTS WITH SCIENTIFIC PAPERS

Thursday, April 15, 2021

ONLINE ON ZOOM

Keynote speakers:

Lecturer **Radu Ștefan PĂTRU,** *Faculty of Law, Bucharest University of Economic Studies*

Researcher **Cristina Elena POPA TACHE**, *Vice-president of the European Association of Banking and Financial Law – Romania*

! Each paper will be presented within 15 minutes
! Fiecare lucrare va fi prezentată în maxim 15 minute

REGULATIONS REGARDING THE SHAREHOLDERS OF A CREDIT INSTITUTION

Ianfred SILBERSTEIN
President of AEDBF- Romania
Honorary president of the Association of Legal Advisers (in house) in the Romanian Banking System

Abstract
The rules enable the National Bank of Romania to assess the information on the source of funds to be used for the proposed acquisition, including both the activity that generated the funds and the means by which they were transferred and, at the same time, the Supervisory Authority to assess whether could give rise to an increased risk of money laundering or terrorist financing. As can be seen, the recent regulation of the NBR provides the most relevant information about the significant shareholder so that there is a more accurate picture of his personality. In this way, by assessing the significant shareholder as responsibly as possible, the possibility of knowing him as concretely as possible will be created, so that the Supervisory Authority will be able to assess in all aspects the personality of the significant shareholder and give such a substantial assessment, as well as its responsible in the conditions of prudence in the spirit of legality.

SOME IMPLICATIONS OF THE GLOBAL DIGITAL ECONOMY FOR THE FINANCIAL REGULATION AND SUPERVISION

Professor José Carlos LAGUNA
Universidad de Valladolid, Spain

Abstract
In this paper, we are going to point out some implications that a global digital economy has for the regulation and supervision of the financial sector, as they look today. In particular, we will focus on four topics, which are closely related. (i) Firstly, technological innovation and the use of data put new tools at disposal of financial operators and regulators. We have to wonder to what extent the use of new tools, such as artificial intelligence, is going to alter the way of doing business, as well as the way regulation and supervision is exercised (point 2). (ii) Secondly, financial digital revolution is bringing new operators to the financial scene, which are likely to become major players. In other words, we have to consider the role that big techs are likely to play in the financial system (point 3). (iii) Thirdly, algorithmic digital currencies take us to the basics of what is money and what is the role to be played by the States in relation to it. In relation to it, we have to wonder how these new assets and currencies need to be regulated (point 4). (iv) Finally, we have to address the eventual creation of Central Bank Digital Currencies (CBDCs) and their implications to the financial system (point 5).

THE DIGITAL FINANCE PACKAGE (EUROPEANS PROPOSAL 24 SEPTEMBER 2020)

Professor Thiery BONNEAU
University Panthéon-Assas (Paris 2), France

Abstract
The custody and administration of crypto-assets on behalf of third parties' means safekeeping or controlling, on behalf of third parties, crypto-assets or the means of access to such crypto-assets, where applicable in the form of private cryptographic keys. The operation of a trading platform for crypto-assets means managing one or more trading platforms for crypto-assets, within which multiple third-party buying and selling interests for crypto-assets can interact in a manner that results in a contract, either by exchanging one crypto-asset for another or a crypto-asset for fiat currency that is legal tender. This Regulation lays down uniform requirements concerning the security of network and information systems supporting the business processes of financial entities needed to achieve a high common level of digital operational resilience.

REMUNERATION OF BANKERS: LEGAL QUESTIONS FROM THE SUPERVISORY PERSPECTIVE

Esther MARTINEZ – de – BUSTOS
European Central Bank (ECB)

Abstract
The remuneration perceived by Directors and Senior Managers at credit institutions became a topic of interest for regulators and supervisors in the aftermath of the financial crisis of 2007. By then, it was evident that bankers were mostly incentivised towards short term profits (and bonuses), while exposing their institutions to higher risk in the long term. The Union legislator has progressively shaped a regime for remuneration schemes under the Capital Requirements Directive (CRD), with the ultimate objective of aligning remuneration with the long-term objectives of credit institutions. This is achieved through provisions requiring, among others, that part of the remuneration is paid in non-cash instruments, that part of the remuneration is deferred for some years, that retention obligations for the instruments awarded exist, and that an ex-post risk adjustment in the form of a malus, or even a clawback, exist i.e., the possibility for an institution to claim back the remuneration paid if its situation deteriorates further. The particularity for the ECB when ensuring the compliance of these rules is that, in accordance with its statutory provisions, it has to take into account how the different national legislations have transposed the CRD, which obliges the ECB to be very mindful of the differences across jurisdictions. Moreover, while the law provides supervisors with the power to forbid the payment of bonuses, such power can only be exercised under extraordinary circumstances. For this reason, the supervision of remuneration schemes is generally conducted in the context of the ongoing supervisory dialogue with credit institutions.

LEGAL ASPECTS OF A DIGITAL EURO AND RECENT LEGAL DEVELOPMENTS IN THE AREA OF CRYPTO-ASSETS

Katharina MUSCHELER
Deutsche Bundesbank
Christopher HUNT
Deutsche Bundesbank

Abstract
In its first part, the contribution outlines possible legal bases for the introduction of a digital euro and the legal discussions surrounding them. In its second part, the contribution looks at the European Commission's draft regulation on markets in crypto-assets (MiCA) and provides background on ongoing discussions.

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THE GERMAN FEDERAL CONSTITUTIONAL COURT'S JUDGMENT ON THE ECB'S PUBLIC SECTOR PURCHASE PROGRAMME: AN ATTEMPT TO PREVENT THE REDEFINITION OF MONETARY POLICY BY THE ECB?

Dr. Dimitris TSIBANOULIS
President of AEDBF Greece

Abstract
The German Federal Constitutional Court (GFCC) [BVerfG], in its ECB Public Sector Purchase Programme (PSPP) ruling, dated 05.05.2020, held that the ruling of the European Court of Justice (ECJ) in the Weiss case (C-493/17), lacked a proper proportionality assessment. Thus, it declared it ultra vires and, therefore, not legally binding in Germany. The GFCC [BVerfG] reproached the ECJ ruling for an incomplete proportionality assessment as regards the "dosage" of monetary policy measures on the one hand, and economic policy measures on the other hand, as ingredients in the mixture of the policy measures contained in the ECB's asset purchase programmes. In that manner, the GFCC attempts to put the brakes on the new unconventional monetary policy Eurosystem measures launched by the ECB during the global financial crisis, and the sovereign debt crisis in particular, paving the way for a redefinition of monetary policy. The GFCC tries to hamper any involvement on the part of the ECB in European economic policy matters through the launch of market driven monetary policy measures, which may have a collateral economic impact on the Eurozone.

THE IMPLEMENTATION OF A RESOLUTION FRAMEWORK AND THE ESTABLISHMENT OF THE CORPORATION FOR DEPOSIT INSURANCE IN SOUTH AFRICA

Shenaaz MEER
South African Reserve Bank

Abstract
Financial institutions are regarded as too big to fail if they are so systemically important that if they do fail, they cannot be closed or liquidated without having a devastating impact on the financial system, the economy and consumers. Governments in the past, to avoid such outcome have been obliged to support such institutions using taxpayer funds. The consequence meant that shareholders and creditors shared in the good times of profits and risk-taking, but taxpayers had to unfortunately bear the burden of such losses and the impact on governmental finances became a heavy burden to bear. The practical process for triggering a resolution and activating certain steps will need to be set out and determined. The mechanisms and operational elements will need to be embedded and integrated in existing systems and processes both at the Resolution Authority and in various financial institutions. All policy discussions and proposed legislative amendments will and has involved a robust public participation process as FSLAB steers its way through the Parliamentary process. Industry has been involved in prior consultation and multiple interventions will co-create this complex discipline and has contributed to the collective understanding to ensure the implementation of an effective regime in South Africa.

CLIMATE - RELATED AND ENVIRONMENTAL RISKS IN EU BANKING SUPERVISION

Lucía PIAZZA
Banco de España

Abstract
Climate-related and environmental pose a threat to financial stability and at credit institutions' level. This paper delves into the on-going European Union initiatives for a sustainable banking sector, elaborates on how addressing this newly-identified source of financial risk fits within the mandate of prudential supervisors and provides an insight on their treatment under the current prudential framework for European credit institutions.

A CONTEMPORARY OVERVIEW OF THE FACTORING AGREEMENT

Associate professor Sónia DE CARVALHO
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Researcher at IJP - Portucalense Institute for Legal Research, Portugal

Abstract
Modern factoring resulted from the adaptation, in the 15th and 16th centuries, of the Atlantic trading posts to the commercial activity between England and the United States, in which, by virtue of their intensity, commercial warehouses took on a more financial than commercial feature. In the course of this evolution, these intermediaries, in addition to the distribution and consultancy tasks, began to guarantee the fulfillment of the transaction (del credere factors), often granting advances to European producers on the price of goods before sold. The factors thus became known as the 'financiers of European industry'. This sophistication of the intermediary conceived in European merchant schemes was at the origin, between the 16th and 19th centuries, of the colonial factoring, the predecessor of the modern factoring, in which the factor, in addition to distributing the products of European exporters, with special focusing on the textile field, in the New World markets, start collecting its credits, which in the meantime were assigned to it, and of financing, through the provision of advances on sales. Later, colonial factoring gave way to old line factoring, which has assumed since the beginning a financial nature, providing a new range of services. In the old-line classic scheme, the factor thus assumes four essential tasks: collection and management of assigned credits; provision of consultancy services; financing through the granting of advances on assigned credits and guarantee of the debtor's compliance and solvency. The financing role is undoubtedly one of the main reasons that motivate the use of this contract. Indeed, the need to attain financing, in addition to banking, with a greater incidence in times of credit restriction, is pointed out by many

authors as one of the main justifications for the use of factoring in Europe. The crisis currently experienced worldwide following the Pandemic COVD 19 and the role that this contract can play in the economic recovery, through the financing the SMEs, justifies the analysis of the evolution of this contract, as well the legal framework in Portugal.

FINANCIAL CRIMES IN TIMES OF EMERGING AI: IS THE EXISTING CRIMINAL LAW FRAMEWORK ADEQUATE?

Associate professor Igor VULETIC
Faculty of Law, University of Osijek, Croatia

Abstract
Artifical Intelligence (AI) based technology is emerging in almost every field. This applies to financial sector as well. There are financial methods (e.g. market manipulation and price fixing) that imply the participation of an AI system which is designed to perform search tasks instead of people. Problems arise when such a system emits information with the purpose of intentionally misleading the contracting party on the wrong path. AI could master techniques of sending fictitious orders (which will never be performed) and concluding fictitious transactions, with the aim of defrauding good faith third persons to gain in profit. This could occur due to the fact that the AI is programmed to, among other things, find the most profitable business models. Therefore, it could likely happen that AI recognises the conclusion of fictitious transactions as the most profitable option and that it operates accordingly. Author will describe potential financial crimes of AI and discuss the adequacy of existing concepts of criminal law as a respond.

THE OECD MODEL TAX CONVENTION AND ITS COMMENTARIES AS A SOURCE OF INTERPRETATION OF DOUBLE TAXATION TREATIES IN UKRAINE

Associate professor Maryna GLUKH
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Associate professor Viktoriia SERDIUK
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Associate professor Pavlo SELEZEN
University of State Fiscal Service of Ukraine
PhD. Anton BABENKO
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Abstract
Interpretation of double taxation treaties is of utmost importance for application of their norms according to the criteria of good faith in compliance with the provisions of the Vienna Convention on the Law of Treaties. At the same time, there is no consensus in understanding the role of the OECD MC and its Commentaries as means of interpretation of double taxation treaties. As it is demonstrated on the basis of the development of court practice in Ukraine, the present situation does not add certainty to implementation of double taxation treaties and might even have the negative effect on investment climate in a state of source of income. The article does also contain the ways of improvement of application of the OECD MC and its Commentaries during the implementation of double taxation treaties of Ukraine including (1) preparation of the letter on issue of application of the OECD MC and its Commentaries as a source of interpretation of double taxation treaties by the Supreme Court of Ukraine, (2) granting of the technical assistance to tax authorities of Ukraine in the area of application of double taxation treaties in accordance with the international standards such as the OECD MC and its Commentaries and (3) translation of the OECD MC and its Commentaries into Ukrainian language.

INTENSIFICATION OF AML REGULATION AND ITS NEGATIVE IMPACTS ON PAYMENTS INDUSTRY

PhD. student Marek BOČÁNEK
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Abstract
New regulatory approaches in relation to money laundering have come with significant changes to the payment environment and affected entities within the industry markedly. Albeit this approach found justification and was enriched by terrorism financing regulations since 2001, such extraordinary pressure placed on banks has now resulted in a highly conservative stance taken by credit institutions towards their existing or new clients, namely due to their stringent risk-based approach. The objective of this article is to point toward the options of banks working together with clients rated as high-risk, instead of discriminating against them. Methods applied in this article will consist of analysis and synthesis or comparison of information obtained with subsequent deduction. The result of this study is the demonstration of options that may be applied instead of purely sanction-like approach. Thus, a more motivating system for businesses or certain industries may be formed, supporting the development thereof.

LOAN REPAYMENT MORATORIUM: A TOOL FOR HELPING OR HARMING THE DEBTORS DURING THE COVID-19 PANDEMIC IN EUROPE? A COMPARATIVE ANALYSIS OF LOAN MORATORIA IN SELECTED EUROPEAN COUNTRIES

PhD. student. Jan SKRABKA
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Abstract
The paper examines the loan repayment moratorium, which was intended to relieve debtors in a difficult situation during the COVID-19 pandemic. In this study, various aspects of such moratoria are critically discussed and compared from an international perspective. Some debtors were significantly hit by the pandemic, whereas others were not; should the moratoria apply to all of them? The occurrence of the free-rider problem or even harm to some clients is among the unintended results of the policies adopted. Moreover, the loan repayment moratorium has different effects on the traditional banking sector and P2P lending platforms. Such aspects had not been sufficiently discussed before adopting such moratoria and might have a negative impact on some debtors, on some creditors, or the market and society in general. The paper uses a comparative perspective on loan repayment moratoria in different countries among other traditional legal research methods. The conclusions of the paper may help the regulators and lawmakers with the preparation of more balanced regulations of repayments for the next crisis, which should reflect both the perspective of debtors and creditors.

A COMPARATIVE ANALYSIS OF COMPANY DIRECTORS' ACCOUNTABILITY AND THE STATUTORY DUTY OF CARE, SKILL AND DILIGENCE IN SOUTH AFRICA AND ZIMBABWE

Professor Howard CHITIMIRA
Faculty of Law, North West University, South Africa
LLM. Friedrich HAMADZIRIPI
University of Fort Hare, South Africa

Abstract
This article provides a comparative analysis of company directors' accountability and the application of the duty of care, skill and diligence under the South African and Zimbabwean company law. Notably, Zimbabwe has recently partially codified company directors' duty of care, skill and diligence for the first time in the Companies and Other Business Entities Act [Chapter 24:31] 4 of 2019 (COBE Act), which came into effect on 13 February 2020. On the other hand, the Companies Act 71 of 2008 (Companies Act) of South Africa also partially codified company directors' duty of care, skill and diligence and it came into effect on 1 May 2011. Consequently, South Africa has developed some good academic literature and jurisprudence on the duties of company directors for almost a decade. This is one of the reasons why South Africa's Companies Act was chosen for a comparative analysis with Zimbabwe's COBE Act on directors' duties. Accordingly, the article discusses the gaps and flaws in the relevant company laws in South Africa and Zimbabwe in relation to the interpretation and application of the directors' duty of care, skill and diligence. This is done to recommend some measures that could be adopted by the relevant regulatory bodies and companies to enhance their directors' accountability in both jurisdictions.

MORATORIUM OF LOAN REPAYMENT DURING THE STATE OF EMERGENCY AND THE STATE OF ALERT

Ciprian CHIOREAN
Vice President - Association of Legal Advisers in the Banking Financial System

Abstract
In the context of the pandemic, which we have been going through for more than a year, the states have been forced to intervene with measures in support of debtors in difficulty to fulfill their payment obligations to credit institutions. One such measure is that of loans moratorium. Credit institutions have shown flexibility and have also identified measures to support borrowers in difficulty, in addition to those enacted by the government. The institution of suspending the repayment of loans acquired during this period a special scope and aroused the interest of the market actors, even the Constitutional Court being notified to rule on the constitutionality of the provisions of the normative acts adopted in this context. In an attempt to harmonize the treatment of the suspension of loan repayment, the European Banking Authority published on 02.04.2020 the Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis. Although there is a common goal, despite the guidelines set by European Banking Authority, at the level of European states there is no unitary vision on this subject, the solutions adopted by each state being diverse. The credit institutions must carefully continue to monitor and further assess the unlikeliness to pay by borrowers both during and after the moratorium period.

FORENSIC INVESTIGATION OF CRIMES AGAINST THE EU'S FINANCIAL INTERESTS

Associate professor Petruț CIOBANU
Faculty of Law, University of Bucharest, Romania

Abstract
The phenomenon of globalization determines the new dimension in terms of state development, so that the protection of the financial interests of the European Union is an extremely important issue of our society. The funds allocated by the European Union to the Member States enjoy legal protection through a number of institutional instruments and means of criminal law. By the accession of our country to the European space, bodies, norms and rules for accessing European funds were created, correlated with the incrimination and sanctioning of crimes regarding the illegal access to these funds, in art.18/1 - art.18/5 of Law no. 78/2000, in a separate section entitled "Crimes against the financial interests of the European Union". Today, the fight against fraud against the financial interests of the European Union has new dimensions by identifying and using the most effective means to prevent, combat and cooperate. The forensic investigation of crimes against the EU's financial interests aims to establish the illicit activities by which the general budget of the European Union or the budgets administered by it has been defrauded, to identify the perpetrators and to establish the contribution of each to the commission of crimes. and the prosecution of guilty natural or legal persons.

CORPORATE FINANCING (ON PRIVATE EQUITY AREA)

Lawyer Sebastian BODU
Bucharest Bar Association, Romania

Abstract
Two are the external sources of corporate financing: equity and debt. These are exclusive (other sources of external financing no longer exist, but only variants thereof) and can be combined in turn. Capital with which a company is financed is its engine, no company being able to operate without capital regardless of the industry. Funding may be private or public. Private financing is provided through banking credit or equity contracted through direct negotiation with investors. Each mode of financing has advantages and disadvantages, not only in terms of financial costs (direct) but also indirect costs. Internal funding source is self-financing, i.e. reinvesting the company's profit instead of distributing it in the form of dividends. Balancing the use of internal and external financing sources, as well as the share of an external source in relation to another external source, primarily depending on the cost of financing (direct or opportunity) is a difficult, important and complex decision. The more the company is and/or the more attractive for investors, the more varied the range of financing options and the cost structure that is heavily influenced by rating agencies. Conversely, a small company without too many development prospects will not have access to all available sources in the market and will have to confine itself to small bank loans. Corporate contributions can be in cash, in kind, in debt and in services. They constitute the common fund that the shareholders exploit under the umbrella of the legal personality of the company. From a legal point of view, contributions become property of the company (assets) and it dispose of them as it deems necessary by spending, selling or mortgaging. In order to be valid, the contributions must fulfill several conditions. In all cases, the contributions must be real, fictitious inputs being forbidden. Apart from the reality of contributions, they must also be useful to company. In exchange for its contribution, the shareholder receives shares incorporating rights, which for a shareholder or future shareholder interested in his investment is the share of legal capital or, in other words, the share of the legal capital represented by his shares in the company. The second form of external financing, credit, may be private or institutionalized. Institutionalized credit is an interest-rate loan granted by a financial institution such as a bank, an investment fund, or a non-banking financial institution. In practice, funders put conditions for the funded company in relation to its shareholders, managers or assets, so as to avoid changes that would risk reimbursing the credit. The statute of limitation of the right to request repayment of the credit is within three years of the maturity date, and in the case of successive loans between the same parties, a separate term will begin to run for each loan. The repayment of credits granted in a given currency must be made in the same currency, regardless of the increase or decrease of the value of the respective currency against other currencies (the monetary denomination rule). To hedge foreign exchange risk, some companies resort to hedging through options on the foreign exchange market in the form of risk transactions in the opposite direction to that assumed by the contracted loan.

GENERIC CONDITIONS FOR THE CROSS-BORDER BANKING BETWEEN MEMBER STATES OF THE EUROPEAN UNION. THE EXAMPLE OF THE INTERNATIONAL INVESTOR REVOLUT BANK UAB

Cristina – Elena POPA TACHE
Vice-president AEDBF Romania

Abstract
Any type of foreign investment, including those belonging to investors from the Member States of the European Union, operates in compliance with certain conditions and standards of legal treatment established by international law. This study includes a case example of the conditions for establishing a foreign investment in the financial - banking field in two EU Member States: Romania (EU Member State since 1 January 2007 and pending for acceding to the Schengen Area) and Lithuania (EU Member State since 1 May 2004 and member of the Schengen Area since 21 December 2007). It is a recognized fact that, following the entry into force of the Lisbon Treaty, FDI is now within the exclusive competence of the EU. The Treaty recognizes that this new EU competence is a double challenge, on the one hand, for the management of (existing) bilateral investment treaties and, on the other hand, for defining a European investment policy that meets the expectations of investors and beneficiary states, but also to the EU's foreign policy objectives and broader economic interests. The United States and Canada are among the first countries to adapt their BIT models to limit interpretive capacity through arbitration and ensure better protection of their public intervention space.

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THE CURRENT CONDITIONS OF THE PAYMENT PROCEDURE IN THE CREDIT AGREEMENTS

Associate professor Doru TRĂILĂ
Faculty of Law, University of Bucharest, Romania

(HOW MUCH) CAN THE JUDGE INTERVENE IN BANK CONTRACTS?

Associate professor Radu RIZOIU
Faculty of Law, University of Bucharest, Romania

Abstract
This topic analyzes the active role of the court in adapting the credit agreement both in relations with consumers (L193/2000, L77/2016) and in unforeseen situations brought by Covid-19.

A HOT TOPIC: IS THE LETTER OF GUARANTEE ENFORCEABLE OR NOT?!?

Associate professor Sergiu GOLUB
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Abstract
The concern to find out whether or not the letter of guarantee, issued by a bank, is an enforceable title was not the concern of many (we could even say the opposite). A few sporadic mentions in the doctrine, hardly summing up a few lines and those stingy in arguments, taking the form of assertions (elliptical). These axiomatic truths are not, however, unanimously shared, neither by doctrine nor by jurisprudence. But even peremptory arguments to the contrary are not easy to detect ... However, the subject was relatively cold until it appeared on the agenda of the High Court, which was asked to resolve this dilemma in advance. With this change in the situation, the subject became "hot" and appeared on the list of "service respondents" in such cases. The issue, distilled by the High Court of Cassation and Justice, reads as follows: "from the corroborated interpretation of the provisions of art. 120 of the Government Emergency Ordinance no. 99/2006, art. 2279 and art. 2321 Civil Code 2009, can the character of executory title of the bank guarantee letter be retained?". We will try, in the following, to show that, from our point of view, the answer is a firm one and definitely not. The enforceability (of the letter of guarantee in general) of the letter of guarantee issued by a bank cannot be retained. Neither under common law nor, moreover, under special law. We will evoke multiple arguments - legal etymology, legal nature, proximate gender of the operation, legislative (in) evolution, legal topography and others, trying to counteract a weak (in this context) ubi lex non distinguit ..., the basic exponent of contrary opinion.

THE BANKING SECRECY IN THE LIGHT OF THE EUROPEAN COURT OF HUMAN RIGHTS DECISIONS AND OF THE EUROPEAN UNION COURT OF JUSTICE

Lawyer Constantin BRÂNZAN
Bucharest Bar Association, Romania
Lawyer Liana BRENDEA
Bucharest Bar Association, Romania

Abstract
Over the time, about the banking secret and its "mysteries" it has been written quite a lot, so although the institution in question is particularly attractive and interesting few new things would be to add. In the Romanian legislation banking secrecy is regulated by the law applicable to credit institutions, a law that transposes a European directive, and professional secrecy benefits from regulations that are the subject of several normative acts. On the other hand, we found that the judicial practice at least at the level of the Romanian courts is not a vast one, meaning that we found not only interesting but also instructive to present two judgments of 2015, pronounced by European courts, respectively by the European Court of Human Rights and by the Court of Justice of the European Union, in two distinct cases but both in connection with professional secrecy/banking secrecy. The first decision, the one delivered by the European Court of Human Rights, by which the Portuguese State was convicted of accessing the bank accounts of a lawyer, considering that there is a breach of Article 8 of the Convention, considering the absence of procedural guarantees and effective judicial review of the disputes measure, so that the Portuguese authorities have not, in the present case, ensured a balance, fair between the imperatives of the general interest and the requirements for the protection of the applicant's right with regard to her private life. The second decision, that of the Court of Justice of the European Union, in which, following a preliminary question by a German court, considered that Article 8, paragraph (3), letter (e) of Directive 2004/48/EC of the European Parliament and of the Council as of 29 April 2004 on the observance of intellectual property rights must be interpreted as opposing a national provision, such as that at issue in the main proceedings, which authorizes, without limitation and unconditionally, a banking institution to invoke banking secrecy in order to refuse to provide, within the framework of Article 8, paragraph (1), letter (c) of that directive, information on the name and address of the holder of an account.

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THE PROFESSIONALS' DUTY TO INFORM VERSUS THE DUTY TO ADVISE THE CONSUMERS IN THE FIELD OF BANKING SERVICES: ARE THE LEGAL REMEDIES ADEQUATELY SHAPED?

Assistant professor Juanita GOICOVICI
„Babeș-Bolyai” University of Cluj-Napoca, Romania

Abstract
The study addresses the issue of the level of interweaving between the banking obligation to inform and the obligation to advise in relations with consumers in the field of banking services, while accentuating the roles played by the informative formalities in this specific domain. While the epitome of the professionals' duty to inform the consumers is represented by the banking professionals' mandatory legal obligation to present, in the pre-contractual phase, a set of neutral substantial information available to the consumer on the objective, technical contractual terms, oriented towards the formation of a valid, informed consent, the specific content of the pre-contractual duty to inform the consumers refers to: (a) the informing of the consumer on the essential characteristics of the financial services; (b) the informing of the consumers on the security of a banking investment product the risks of which are superior to the average acceptable risks. The banking professionals' duty to advise the consumers designates the obligation to orientate the consumer's choice which regards the potential contractual terms, oriented towards the providing of value judgements fixing the pertinent references for the consumer's option for the most adequate contractual terms, especially in terms of the evaluating of the opportunity to accept a particular configuration of the contractual terms. Particularised by its specific functions, consisting in the orienting of the client's choice between different types of offer elaborated by the professionals, the duty to advise the consumers permits the calibrating of the contractual field as correlated to the consumer's specific, concrete necessities. Implying the providing of subjectively calibrated advise, of individually configured value judgements or of personally adapted financial advice, the banking professional's obligation to advise the consumers imbricates an effort to personalize the information, directly correlated with the individual necessities of the profane consumer, while distinguishing between two types of performance: (a) the expressly solicited financial or judicial advise; (b) the duty to advise the consumers in the hypotheses of accentuated judicial technicity of the contractual terms.

JURISDICTION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION ON IMPLEMENTING MONETARY POLICY. CASE-LAW ANALISYS

Professor Mihaela TOFAN
Director of the Jean Monnet Department of European Financial Law
University "Alexandru Ioan Cuza" of Iasi, Romania

Abstract
The paper presents the arguments of the Court of Justice of the European Union (CJEU) in case Dietrich (C-422/19) and case Weiss (C-493/17), which concern the analysis on the compliance of the national law and regulations adopted by the European Central Bank (ECB) with the primary sources of European law (Treaty on the Functioning of the European Union - TFEU) and with the mandatory rules of the Statute of the European System of Central Banks (ESCB). Pending disputes, both in Germany, have reopened the subject previously discussed in the case Gauweiler (C-62/14), concerning the adoption of rules alleging that monetary policy limits have been exceeded and that the ban on monetary financing has been infringed (Article 123 TFEU). In the case Dietrich CJEU examined the concept of means of payment accepted in the euro area, in the case Weiss there is an analise on the program of acquisition of the public sector in secondary markets, formally adopted and implemented for more than three years, while case Gauweiler verified the conformity of the program for the purchase of government securities issued by euro area Member States. The paper reveals the competence of the CJEU to verify the rules by which monetary policy measures are implemented and it proves the extension of the EU monetary policy effects outside the euro area, through the influence of the CJEU jurisprudence in the legal system of all Member States.

PROTECTION OF THE RIGHT TO REIMBURSEMENT OF SHARES OF THE REORGANIZED BANKING COMPANY BY MERGER - INTERNAL PROVISIONS AND EUROPEAN CASE LAW

Lecturer Andreea Corina TÂRȘIA
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Abstract
The exercise of the right protected by art. 1 of Protocol no. 1 of the European Convention on Human Rights does not only depend on the obligation of the State not to interfere, but may require positive protective measures, especially when there is a direct link between the measures that the complainant can legitimately expect from authorities and the right to an effective observance of its "assets". Although art. 1 of Protocol no. 1 does not contain explicit procedural requirements, the Strasbourg Court has ruled that states have an obligation to provide judicial proceedings that can offer the necessary procedural guarantees and therefore allow local courts to rule effectively and equitably on any litigation between persons, both in cases involving state authorities and in cases involving only private parties. On the other hand, the European Court of justice has ruled that, in other circumstances, the right of withdrawal of shareholders in the event of a merger of the banking company may be limited on grounds of public interest, invoked in the context in which, banks or small groups of banks are not able to cope with, without excessive difficulties, for example in the case of financial deposits imposed by the newly established system of the European Banking Union. These situations highlight the serious shortcomings in resolving reimbursement of shares disputes, as they may raise the issue of reconciliation between shareholders' rights, based on Article 1 of the Protocol, and the general interest in consolidating the capital of the banking system and the need to maintain bank's stability.

LEGAL NATURE OF OBLIGATIONS RELATING TO SETTLEMENTS OF 0.1% QUOTAS OF THE VALUE OF CERTIFIED WORKS OWED ACCORDING TO ART. 30 OF LAW NO. 50/1991 REGARDING CERTIFICATION OF CONSTRUCTION WORKS AND 0.5 % OWED BY VIRTUE OF ART. 43 OF LAW NO. 10/1995 REGARDING QUALITY IN CONSTRUCTIONS. ASPECTS ON THE SUBJECT MATTER JURISDICTION OF THE COURTS OF LAW REGARDING SETTLEMENT OF DISPUTES AND STATUTE OF LIMITATIONS APPLICABLE

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Abstract
The judicial practice has met with the issue of the legal nature of obligations relating to settlements of quotas of 0.1% of Law no. 50/1991 regarding certification of construction works and 0.5% owed according to article 43 of Law no. 10/1995 regarding quality in constructions. Classifying these obligations as to whether they are of fiscal nature or not triggers significant legal consequences relating to statute of limitations, date of which late penalties are calculated and subject matter jurisdiction of the courts of law regarding settlement of disputes.

REGISTRATION OF PERSONAL DATA IN THE RECORD SYSTEM OF THE CREDIT BUREAU - AN ANALYSIS OF NON-UNITARY CASE LAW

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Abstract
The paper analyzes the legal regime of registration of personal data of individuals, debtors of banking companies and NFIs within the Credit Bureau (Biroul de Credit) S.A. The paper analyzes the provisions of Decision no. 105/2007 on the processing of personal data in record-keeping systems such as credit bureaus and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to data processing of personal character and regarding the free movement of these data and the conflict in time between the two normative acts, as it has been interpreted in the non-unitary jurisprudence of the courts. The results of the study show that, in the majority jurisprudence at the level of the Bucharest Tribunal, Decision no. 105/2007 continues to apply for the registration of late payments from credit agreements signed before May 25, 2018, although this decision is no longer in force. The implications of this conclusion are major for the activity of banking and non-banking financial institutions, the present paper arguing that for these credit agreements the records made in the database of Credit Bureau S.A. under Regulation (EU) 2016/679, the majority practice in these institutions, are illegal.

THE RIGHT TO WORK AND PRECARIOUS WORK

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Abstract
This article aims to bring to the fore the emergence of the phenomenon of precarious work, starting from the legislative enshrinement of the fundamental right to work. The need for this analysis is the result of accelerated social and economic change, and employment status is only one of the many problems facing workers in the economy, since ancient times, until now. Work is an essential factor for the existence of a society, which is why it is included in the category of fundamental rights, being enshrined in the country's Constitution itself. It could also be said that the right to work is integrated into the category of natural rights, as it gives expression to the human right to live as a result of obtaining the necessities of life. Precarious work has emerged in the context of economic development and growing job insecurity. Precarious work occupies a special place in the European work model, so it is important to analyze the reasons behind the emergence and spread of this phenomenon and also outlining a definition and its essential conditions, a concept that will become a separate legal institution.

BANKING OFFICER AND CRIMINAL LAW

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Abstract
The study aims to examine the meaning of the notion of bank officer from the criminal law perspective and the criminal implications in case of crimes committed by them. The object of this analysis is both the banking employees of some banking units with full or majority state capital, as well as those of the private banking units. The author arguably criticizes the interpretation given by the supreme court by the preliminary decision no. 18/2017, formulating some genuine ideas that emerge from the analysis undertaken and even offer some suggestions for improvement of the examined texts. In this analysis, the technical-legal method was used as research method, which involved the study of exegetical, dogmatic and critical incidental criminal norms. Based on the literary, rational and teleological interpretation of the texts subject to analysis, the author tries to clarify this concept from the perspective of criminal law. Through this study, the author brings the necessary clarifications for a unitary interpretation and application of the criminal law to banking officials by criminal judicial bodies.

THE ESCROW CONTRACT, A MECHANISM FOR GUARANTEEING AND SECURING PRIVATE AND PUBLIC CONTRACTUAL RELATIONS

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Abstract
The present study aims to analyze the formation mechanism but also the effects that the use of the escrow contract produces in the contractual relations between the parties. The necessity and utility of the study results from the fact that the Romanian legislation does not expressly regulate the escrow contract, therefore falling within the scope of unnamed contracts. The thesis from which this research is founded is based on the purpose and role of the escrow contract, namely, to generate an "additional guarantee" to the parties already involved in a main contractual relationship, which will be ancillary grafted to the escrow contract. Thus, a first objective of the research will aim to analyze the formation method, the particularities but also its effects in the relations between the parties but also the relationship between the main contract and the accessory one. A second objective of the research will materialize through the careful study of legal texts that directly refer to and regulate the use in certain areas, such as privatization or insolvency, of escrow accounts in order to secure already existing contractual relations between the parties. In order to carry out this research, the aim will be to study the updated legislation that refers to the subject of the escrow account contract, the relevant jurisprudence but also the specialized doctrine in the field.

THE THREAT OF ISLAMIC EXTREMISM IN THE WESTERN BALKANS FOR THE NATIONAL AND INTERNATIONAL SECURITY

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Abstract
The profound economic crisis and political tensions that have reigned in the territory of former Yugoslavia during the last two decades of the previous century (XX century), and especially the circumstances of the war in Bosnia and Herzegovina and Kosovo, have influenced the creation of perceptions of social insecurity among all segments of society. These circumstances, characterized by the improper functioning of the state apparatus, the high level of corruption, the degradation of the public health system and the destruction of the education system, have enabled the unhindered activity of foreign extremist organizations in some countries of the Western Balkans. During this time, all countries in the region were gripped by crises and similar social, economic and political conflicts. In these circumstances, it was enough for a foreign extremist organization to settle in Bosnia, Albania or North Macedonia, and through ethnic ties and the common Islamic tradition that prevails in this compact geographical region, be able to extend its destructive force to other parts of the Western Balkans. Thus, a large number of Islamic humanitarian and non-governmental organizations from Saudi Arabia, the United Arab Emirates, State of Qatar, Kuwait and Turkey, later identified as terrorist financing organizations, have invested hundreds of millions of dollars to build a strong propaganda infrastructure, with the aim of spreading a radical ideology and inciting hatred and various religious conflicts in Bosnia, Kosovo, Albania and North Macedonia.

EXTINCTION OF THE RIGHT OF REAL SERVITUDES IN KOSOVO COMPARATIVE ASPECT WITH SOME EUROPEAN COUNTRIES

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Abstract
An established as well as acquired easement right (recorded in the public real estate books) may have reasons that may lead to the termination of this right. The right of real servitude exists to perform a certain function, a certain social role. And when for some reason this function of the right of servitude can not be applied in practice, then the right of servitude ends or may be extinguished. As with all other legal relationships, and with the servitude relationships with which the legal relationship was created or changed, I can reach a point where that relationship is extinguished. When we talk about a legal relationship, we say that it is the relationship in which a legal title can be created, changed or even extinguished on a certain thing or right. In the present case, the right of servitude is created by a legal title or can be changed from the initial creation by a legal title. In this case, the legal title created either by a legal work or by any of the state bodies, may lead to the disappearance of the right. In all cases in which it is claimed that the right of real servitude can be extinguished, then it must be seen if there is any of the reasons provided by the legal doctrine. As well as regional laws, with the exception of the Kosovo LPDTS, which does not provide for any cause leading to the termination of a real servitude right, but only states that a real servitude right can be extinguished like other established rights. from a legal relationship. It would be very necessary if all the causes (reasons) which lead us to the disappearance of a right of real servitude, are mentioned in the laws.

LEGAL SUPPORT OF SOCIAL RESPONSIBILITY OF AGRIBUSINESS ENTITIES OF UKRAINE

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Abstract
Corporate social responsibility is a current issue for every European country, due to the implementation of the UN Guiding Principles on Business and Human Rights. For Ukrainian agribusiness the issue of social responsibility becomes especially important as Ukraine is at the initial stage of formation of the land market. It is expected that investors will take part in the social development of rural areas. So, this must be taken into account when planning agrarian business in Ukraine. At the same time, the legal regulation of corporate social responsibility is still insufficiently developed. This determines the relevance of the topic of the article.

COMPARATIVE ANALYSIS OF THE LABOUR INSPECTORATE IN KOSOVO, ALBANIA, NORTH MACEDONIA, SERBIA, CROATIA, SLOVENIA AND LATVIA AS WELL AS THEIR ROLE IN THE IMPLEMENTATION OF THE LAW ON LABOUR

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Abstract
This work will analyze the comparative aspect of countries which have characteristics similar or approximately similar to Kosovo. Studying in particular the Labor Inspectorate and its role in the implementation of labor legislation. The Labor Inspectorate is an independent body of the State Administration which operates within the ministries of the respective countries. The Labor Inspectorate is the only authority body within the executive branch that monitors and implements legislation in the field of labor relations as well as occupational safety and health. In the framework of the analysis of labor inspectorates, comparative analyzes were performed in: Field of activity, Organogram, Competencies of the Chief Inspector, Employment Criteria, Inspections, Fines, Complaint Procedures, Number of inspectors and Budget of Labor Inspectorates. Employers in the industry and in the institution are obliged to respect them and enable them to exercise the rights that belong to them from the employment relationship. In any case when employers or institutions do not respect the rights of workers or prevent them from exercising any right from the employment relationship, there is a labor dispute and Labor Inspector has the obligation to act on the request of the employee for realization and protection of their rights.