

FINANCIAL CRIME IN THE ROMANIAN BANKING SYSTEM

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Abstract

The crime in the financial and banking system, through the disasters it produces, damages and large amount of victims, generates the largest economy damages, both national and international level. This phenomenon occurs and is manifested in a specific environment, the economy and finances one, takes different forms and operates with appropriate techniques. Most of the times, the banking system from Romania, has been used for personal grounds, which leads to serious damage of the Romanian economy. Insufficiently matured economic or imperfect judicial environments are only some of the factors that led to the commission of crimes in this area. Also, this type of crime has been determined, among other things, by the economic status, the social structure or the stage of development of the society.

Keywords: banking and financial crime, corruption, banking fraud.

Introduction

Financial – economic crime, also known as the white collar crime, generates great damages to the international economy. Nevertheless, the transgressors who do crimes in this field are regarded by the society as people who found a way to avoid the coercitive action of the state, consisting in the increasing taxes and impositions. Therefore, these individuals are not considered criminals, although the criminal law makes no distinction; on the contrary, they are treated with respect, are considered businessmen, persons who don't deserve to be held liable for the fact that they found solutions, illegal even, to elude the financial legislation of the state where they conduct their business.

The phenomenon of the economic- financial crime takes place and manifests in a specific environment, of economy and finances, which can display a large diversity of organisational forms, which are in a permanent transformation, and offer a large gama of possibilities of actions, doubled by the correspondent techniques.

The victims of this phenomenon are the citizens, but, sometimes, are also the business partners, governmental institutions, the business sector and the banking and financial environment.

The indirect victims are the citizens, those who, as a consequence of the embezzlements, frauds and illegal misappropriation, and of the unauthorized management buy – outs, are seeing their level of life diminished, the medical assistance compromised, the acces to education and information blocked by the illegal downsizing of the social funds destined to fulfill these objectives.

The criminality in the business sector has as a result, by the great proportion of damages and number of victims, an obvious imbalance of the whole society, with direct impact on the climate of public order and national security¹.

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¹ C. Voicu, G. Ungureanu, A. Voicu, *Globalisation and banking – financial criminality*, Juridical Universe Publishing House, Bucharest, 2005, p. 440.

The long term consequences of this type of criminality are not yet wholly taken into consideration, and in an economy in transition, like the one Romania has experienced, in which the financial and fiscal legislation has had a difficult birth and an even more difficult ageing process, the main consequence was the apparition of the carton – billionaires class, on the background of the pauperisation of the rest of the population.

After 1989 the foreign banking organisations have become available also for romanians, and these institutions offered not only a more evolved and competitive frame for the evolution of business, but also the means of creating an appearance of legality for some illegal activities. The same banking organisations have become also the place where the money coming from criminal activities conducted on romanian territory have found their destination.

From this point of view, the year of 1989 was the moment of the beginning of the great financial and banking criminality in Romania, when the romanian banking system has become concurrential and private.

However, the possibilities offered by the sheer existence of this banking system, and also the possibilities given by the unlimited acces to external banking systems were not known but by a group of individuals which was very small in comparison to the rest of the population.

Among these few initiates there were persons who brought their contribution to the growth and evolution of the romanian banking system and who knew to blend their personal interest with the social one, but there were also those initiates who used the system only for their personal interest, in most cases producing great prejudices to the romanian economy.

The bankruptcy of banks such as Dacia Felix, Credit Bank, Bankcoop, Banca Albina, Bancorex and others ment not only the lost of the personal economies for thousands of romanians, but also the impairment of public trust in national banking system. Yet, the earnest effect of these bankruptcy was that o great part of the forfeiture were directly or indirectly absorbed by the national economy, which therefore became weaker and more instable.

The infractionality in the financial – banking environment

A. Causes and factors which determine the perpetration of crimes in this sector. The greatest desasters who took place in the world of finances and banks have had as a generator factor, the immense potential this backround can have in the purpose of obtaining a meaningful material gain². The huge profits that can be gained by malevolent use of the banking system determined the apparition of a new type of criminal – dangerous and versatyle – who exercised his illegal inclinations in a social environment characterised by the following factors:

- an economic backround insufficiently aged, marked by the easiness with which new economic agents and new financial institutions can appear, offering promissing perspectives, in many cases accompanied by a matching advertising.

In the absence of an established tradition in this field, the system becomes vulnerable due to the fact that the possible intruders like these, who look for an illegal purpose, are tracked down too late. Unfortunately, the economic environment existing in Romania in that period of time made possible the action of such organisations who had as only purpose fast enrichment, regardless of means, of a limited number of persons, others then the deponents.

- the faulty judiciary environment offers the ideal terrain for the initiation and finalisation of such illegal business, ended in colossal damages. The judicial system is either defective, either constantly behind the pace of business evolution, which is a dynamic environment, with his own laws and economically motivated.

In most cases, the legislative discrepancies are the ones speculated, but, equally dangerous is the abundance of bills, allways changing, which rends the development of a correct economic activity almost impossible, even when one wants to act in good faith.

² Ibidem.

- the corrupt political environment is, undoubtedly, the factor who is the base of the economic chaos.

Individuals who took their business to the limit of the law or even broke it, and who gained enormous profits, afforded to buy themselves key positions in politics, which granted them immunity and also an increasing power.

Politicians such these initiated and advocated unhealthy legislative initiatives, poisoned the economic environment and developed an underground world who bolstered their position, but weakened the economic national power in the process.

- the utterly deficient external and internal control is another factor that encourages and amplifies the frauds in banks and financial organisations.

The lack of experience, the faulty knowledge of laws, the absence of any motivation, reproached to the organisations empowered with control powers, contributed to the creation of an instable and vulnerable environment, in which the potential factors could manifest themselves freely.

- the defective management of a banking institution can easily bring upon illegal activities, either from inside the bank as well as the outside of it.

The desire of gaining immense and immediate profits can generate wrong managerial decisions, with utterly grave consequences.

One of the realities of the period we go through at this moment is the growth of the diversity and dimension of criminality on a global level, and especially on the level of bank criminality. It is obvious that, today, the banking criminality has extended to a wider area, takes new forms, some of which are more sophisticated and unknown until now, such forms being in fact the product of the actions of criminal groups organised by true specialists³.

The analysis of the dimensions and forms of the ways of manifestation of the economic – financial crime in Romania of the last 20 or 30 years brings to light the fact that this phenomenon was caused by the state of the economic, social and political environment, by the social structure, the level of economic development and the level of social stability. The changes that took place in these fields influenced the content and ways of manifestation of economic and financial crime. There have appeared new forms of delinquency, after the year of 1990 being revealed even a veritable aggression towards the state property, materialised in embezzlement and thefts of huge proportions, a real industry of smugglers, a rioting outbreak of pyramidal games, the plunder of the most important banks, of the public finances and the disastrous collapses of some investment funds.

Taking advantage of the fact that the legislation regarding the banking activity was not brought to the realities of the day, (the bills were drafted in the seventies), until 1990 the banks bolstered their positions and intruded in the Romanian economy by backing up the private sector, and therefore consolidating their positions by offering a large number of credits, to which they tolled big commissions and interests.

The financial and banking world extended the roots of its power so well and so deep in all the state structures due, mainly, directly to the power of banking and financial institutions, organised and handled according to a strict set of rules established by specific laws, regulations and procedures.

Thus, we find ourselves in a space that is so well guarded, that sometimes seems impenetrable, and so sophisticated, that only the strict professional initiative can change the internal regulations and law provisions, which, often through an apparent confused enunciation, grants the system "imperviousness" against any instrument of assay and control⁴.

B. Banking fraud. The term of banking fraud refers to the illegal acts that affect banks, financial services (loans, investments), and that concern instruments of payment, checks, promissory notes, notes of hand⁵.

³ Ibidem.

⁴ G. Ungureanu, A. Boroi, *Introduction in applied crime*, Juridical Universe Publishing House, Bucharest, 2004, p. 51.

⁵ C. Voicu, *Business criminality*, M-I Publishing House, Bucharest, 1997, p. 21.

According to the Explanatory Dictionary of the Romanian Language, fraud means deceit, that act of bad – faith usually committed in order to gain a material profit from damaging the goods or interests of another person, which is, finally, a sort of theft.

Referring to fraud as a way of deceiving the bank, the term means the sum of the illegal actions and manoeuvres done by the bankers through the banking entity which is therefore directly damaged by the interloper transfer of some sources of money in the direct benefit of the bankers or other persons⁶.

The fraud wave of the banking system started in the USA and extended in Germany, Austria, United Kingdom and Netherlands, in fact comprehended the entire European community, and the analysts forecasted a significant growth of crimes in the financial field.

Organised crime has targeted with predilection financial and banking activities and stock exchange, generating international crime events.

This wave of frauds added in also Romania, which was in a period of transition towards the free market economy, and experiencing an utterly alarming evolution.

Most of these crimes involve the granting of banking loans with no guarantees whatsoever or based on false documents, the use of banking deposits fraudulently, the favouring of a few private economic agents in the detriment of state organisations, illegal transfers of money between banking accounts, the issuing of false paying documents with no real coverage acts of abuse and corruption in regards the activity of awarding of loans, the omission of paying the instalments and interests deriving from loans, or the omission of taking the legal measures against some economic agents who broke the financial legislation in this field.

The banking criminality has two components:

- crimes committed by persons outside the bank, the bank being the victim of the fraudulent manoeuvres.

- crimes committed by persons inside the banks, by the staff, with or without the aid of some individuals from outside.

There are some notorious cases - Credit Bank, Dacia Felix, Bancoop, The Fond of Private Property IV – Muntenia, BCR – Timișoara, Ion Țiriac Bank – Brăila, BRD, in which individuals with leading responsibilities, sometimes with the aid of experimented outside elements, began illegal banking operations, by astute means, in order to avoid being caught, produces great damages, by the appropriation of funds that sum up billions of lei⁷.

The beginning of the fight against corruption is indeed a signal that society, at least at decisional level, has noted one of the essential problems that stand at the base of the growth of financial – banking frauds, seldom rising to prejudices of hundreds and thousands of billions.

Irregularities were done also to cover up the huge proportions of frauds that resulted mainly from the omission of repatriation of foreign currencies generated by activities of export conducted by the economic agents, the banks faltering in alerting the judicial organisations of the ones who did not comply with the obligation of giving the "collected foreign currencies"⁸.

Crime has special aspects in the field of non – traditional banking organisations. Some notoriety was gained between 1991 and 1994 by intra – aid organisations such as Caritas and Megacaritas, a genuine madness of multiplied gains, and after their collapse the foundation of another, more sophisticated, serious and generous system was put: the investment funds which began their activity in the absence of any form of control. The increase of non – banking organisations (assurance companies, pension funds, investment funds, stock exchange), caused a powerful back stroke to the banks by attracting large sums of money from the public in the exchange of a number of attractive clauses.

⁶ C. Voicu, F. Sandu, I. Dascălu, *Fraud in the financial – banking and the capital market system*, 3 Publishing House, Bucharest, 1998, p. 112.

⁷ T. Amza, *Criminal connotations and new risks to the public order*, Lumina Lex Publishing House, Bucharest, 2000, p.

⁸ F. Sandu, *Smuggling and organised crime*, National Publishing House, Bucharest, 1997, p. 87.

In this period the romanian banking system was used also for the laundering of dirty money which obtained through smuggling and embezzlement, illegal transfers over the borders of large sums of dollars for which there were no justifications, and the hiding of the money coming from personal illegal operations under the coverage of the principle of secrecy of operations⁹.

The reform of romanian banking system began in 1991 by the creation of two level system, in which the National Bank loses its trait of commercial bank (by the detachment of the Romanian Commercial Bank) and this way the field opens to new categories of banking operators. Since 1990 until now, despite some syncoptes of some banks, negatively received by the public, the romanian banking system is obviously more stable and more well brought under regulation in comparison to the rest of the economy.

C. Underground banking systems. The system *hawalla*. Twelve years ago, at the 58 th Interpol General Gathering, in december 1989, were discussed the systems of illegal international financial transactions. This type of underground banking systems exist for a long time, probably before the apparition of banking systems in the nowadays sense and it appears that they have the origins in Orient.

The underground banking system implies, in essence, the transfer, with no tracks left, of large sums of money in various zones of the globe, by avoiding the legal banking procedures, especially in those country which do not have regulations regarding custom control.

The motives of using this system are diverse, from the sending of small sums of money to relatives in poor countries, to the fiscal fraud and financing the great criminality: political and religious terrorism, arms and drug trafficking, etc.

The name under which this system is known varies from zone to zone: "chop shop" in chinese, "chiti", "hundi" or "hawalla" on the indian sub – continent and "stash house" in Lattin America. "Chop" and "chiti" are the names of an important document that keeps place for receipt and also note of hand.

"Hawalla" is a word in the "urdu" dialect and means trust in hindu.

The trust between parteners is the key stone in underground transactions, without which the whole structure collapses. This trust is obtained by any means, firstly through violence, that determines the partener to accept the rules of the game.¹⁰

On the global level, this type of cases are considered extremelly complicated, with a low percent of solving.

Imigrants which usually, but not allways, come from pauper countries, use a vast number of small magazines, restaurants, internet – caffes and bakeries to send money in the natal countries, as a way of helping. But these stores could be used to laundry money too, and for money transactions ment to sustain terrorism, wars and great criminality.

Since the events of 11 september, the occidental goverments realised that the risc that transfer agencies might well financed terrorism.¹¹

Brief conclusions

Banking and financial crime is a phenomenon that has implications not only in banking but in all areas of activity and, by the consequences it produces, affects the entire economy of a state. In fact, the main purpose of this type of crime is just obtaining the economic power.

⁹ I. Dascălu, *The off shore financial centers*, Argument Publishing House, Bucharest, 2001, p. 4 - 6.

¹⁰ Emilian Stancu, *Treaty of Criminalistics*, 3 rd Edition, Juridical Universe Publishing House, Bucharest, 2004, p. 590.

¹¹ *Almost all on Hawalla, the circuit of black Money*, in National Courier, year 11, nr. 4650, Monday, 05.06.2006.

Although several measures were taken, even modalities to combat this phenomenon have diversified and adapted new ways to commit these crimes, some of them very sophisticated; we here refer to those informative means which enable the performance of some banking transactions in just few seconds; banking and financial crime has increased. Some illegal acts are committed not only by blackmail and corruption, and by threats and violence, which considerably increased the danger to them.

Even if the causes, types of financial crime in the Romanian banking system and adverse effects of them are well known, as shown in the above mentioned, then the question arises which prevents us from easily combat the phenomenon and to draw people severely criminally liable consequently guilty and restore the previous situation in the economy minimize negative effects.

The answer, we unfortunately believe, is simple and primarily aimed the incapacity of the criminal repression authorities to identify in real time the indications for committing financial - banking crimes, incapacity generated by objective factors, such as lack of bank obligations to report items showing these hints and opacity of these institutions who plays erroneously the bank secrecy but also subjective factors such as lack of reputed specialists in the field which should be employed among the judicial bodies.

Taking in account a very simple social economic reality, namely that in the budget system, which includes training criminal authorities, salaries are not likely to encourage the highest recruitment specialists, people working in the field being urged on, in most cases, only by passion.

Last but not least, extremely cumbersome judicial proceedings marked by extremely complex financial and banking expertise by legal experts paid from the budget with amounts ranging between 200 and 5,000 EUR, in conditions in which, the defendants are accused of creating damages that far exceed the million hundreds of Euros, are elements of nature to severely delay the criminal proceedings but effective drawing success chance of the guilty to criminal liability and recovering damages.

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