BANK RESOLUTION

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Abstract

The bank resolution represents one of the technical and legal instruments introduced in the legislative framework belonging to the banking financial market. Within the resolution process, credit institutions and other financial entities, together with supervisory and resolution authorities, are required to develop and implement a series of measures, operations and procedures aimed for preventing and overcoming financial difficulties .The resolution tools, as regulated in Law no. 312/2015 on recovery and resolution of credit institutions and investment companies, as well as on amending and supplementing certain acts in the financial system, and applied by the National Romanian Bank , as a resolution authority, shall be use to defend financial stability and to protect the public interest.

Keywords:*bank resolution, sale of business, bridge institution, asset separation, bail in tool*

1. Introductory note

In order to protect the interests of depositors and to ensure the stability and viability of the national and European banking system, prudential supervision rules and procedures have been established. Moreover, the authorities vested with implementation, supervision and implementation of all specific activities to prevent and identify deviations from the policies viable and sustainable in the banking system have been entitled.

The central banks of each state are responsible for defining the prudential financial supervision operations[1].

As it is known, the legal systems are required to keep up with practical realities in the field, so, in that sense, the Law no. 312/2015 on recovery and resolution of credit institutions and investment companies, as well as on amending and supplementing certain acts in the financial system[2], was adopted, and it is transposing the main European regulations in the field, such as EU Regulation no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, Directive no. 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments[3].

Although the title of the law clearly shows that recovery and resolution are envisaged, in reality the resolution is largely about the recovery of credit institutions and investment firms.

2. Entities subject to bank resolution

It emerges from the law economy that the provisions on recovery and resolution apply to the following categories of entities: credit institutions, investment firms, financial institutions, financial holding companies, mixed financial holding companies, financial holding companies with mixed businesses, parent financial holding companies in a Member State, parent financial holding companies in the European Union, mixed parent financial holding companies in a Member State and mixed parent financial holding companies in the European Union.

According to the law, the entities empowered with resolution prerogatives are the National Bank of Romania and the Financial Supervisory Authority.

Thus, the National Bank of Romania is the resolution authority for:

a) credit institutions, Romanian legal entities;
b) branches in Romania of credit institutions from third countries;
c) financial institutions, Romanian legal entities;
d) financial holding companies, mixed financial holding companies and financial holding companies with mixed businesses, Romanian legal entities and parent financial holding companies in Romania, parent financial holding companies in the European Union, mixed parent financial holding companies in Romania, mixed parent financial holding companies in the European Union, Romanian legal entities which are part of a group subject to supervision on a consolidated basis but which also includes a credit institution.

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[1] For details, see V. Nemeş, Banking Law, University Course, Publishing Universul Juridic, Bucharest 2011, p. 70-71.
[2] Official Gazette of Romania no. 920 of 11 December 2015.
[3] OJ L 176, 27.6.2013, p. 1–337, OJ L 173, 12.6.2014, p. 349–496.

The Financial Supervisory Authority is the resolution authority for:

a) investment firms, Romanian legal entities;
b) Romanian branches of investment firms from third countries;
c) financial institutions, Romanian legal entities; c) financial holding companies, mixed financial holding companies and financial holding companies with mixed businesses, Romanian legal entities
d) parent financial holding companies in Romania, parent financial holding companies in the European Union, mixed parent financial holding companies in Romania, mixed parent financial holding companies in the European Union, Romanian legal entities which are part of a group subject to supervision on a consolidated basis whose parent is an investment firm or which, if the parent company is a financial holding company or a mixed financial holding company, but does not also include a credit institution.

All decisions regarding financial recovery and resolution adopted by the National Bank of Romania or, where appropriate, by the Financial Supervisory Authority, will take into account the potential impact on all Member States where the credit institution, investment firm or group is operating, so as to minimize the socioeconomic negative effects and financial stability in those Member States.

In addition, minimizing adverse effects with an impact on the financial stability, at a European level, is also the main objective pursued by consolidated supervision of entities operating on the European financial and banking market.

3. Measures, operations and procedures specific to the bank resolution

Within the ample resolution process, credit institutions and other financial entities, together with supervisory and resolution authorities, are required to develop and implement a series of measures, operations and procedures aimed for preventing and overcoming financial difficulties .

The main measures, operations and procedures set up at European level and detailed in the Law no. 312 / 2015 are the following: financial recovery procedure, specific operations regarding the preparation and implementation of the resolution, resolution procedure, resolution tools, early intervention, temporary administration and special administration.

All these are operations and administrative procedures because are set up and carried out under the supervision of the supervisory / resolution authorities, excluding the intervention of the courts.

In the following, we will briefly outline the main rules under which they are set up, run and ended, both at an individual and a group level.

4. Financial recovery

One of the first mandatory operations for credit institutions and other financial entities subject to the resolution is to develop strategies for financial recovery[4] for crisis situations.

Thus, in accordance with the provisions of the Law no. 312 / 2015, credit institutions which have a significant share in the national financial system elaborate their own recovery plans which will consist of measures to be taken by the entity to restore its financial position in the event of its significant deterioration.

Under the Law, a credit institution is considered to have a significant share in the national financial system if it fulfills any of the following conditions:

a) the total value of its assets exceeds 30 billion EUR;
b) the share of total assets in Romania's Gross Domestic Product (GDP) exceeds 20 %, unless the value of total assets is less than 5 billion EUR (article no. 9).

As explained above, the law obliges each supervised entity to develop its own recovery plan[5]. The Recovery Plans must contain specific elements and are subject to verification and approval by the National Bank of Romania, and mainly envisage their own scenarios of overcoming the major situations of financial difficulties and, obviously, avoiding bankruptcy.

5. Preparing and implementing bank resolution operations

Preliminary remarks

Another implementation mechanism for preventing, avoiding and overcoming financial crisis situations is the resolution.

In this context, the Law stipulates that the National Bank of Romania, as the resolution authority, shall draw up a resolution plan for each Romanian credit institution that is not part of a group subject to consolidated supervision.

Where appropriate, the National Bank of Romania shall also consult with the resolution authorities in the jurisdictions in which the credit

[4] The financial-banking recovery is not to be confused with the recovery proceedings in the judicial reorganization enshrined in Law No. 85/2014 on insolvency and insolvency prevention procedures. For details, see, St. D. Carpenaru, M.A. Hotca and V. Nemeş, Insolvency Code-Commented, Publishing Universul Juridic Bucureşti 2014, p. 371 et seq .; R.Bufan, (collectively), Practical Insolvency Treaty, Publishing Hamangiu, Bucharest, 2014, p. 583 et seq.

[5] For aspects of the common reorganization plan, see St. D. Carpenaru, M.A. Hotca and V. Nemeş, op.cit. P.380 et seq .; R. Bufan (collectively), op. Cit. P. 591 et seq.

institution's significant branches are located, as the resolution plan is relevant to those branches.

5.1. The resolution plan

The same as the financial recovery, the resolution requires a draft resolution. The difference is that, if the recovery plan is drawn up by each credit institution, the resolution plan is drawn up by the National Bank for each entity subject to supervision.

At the request of the National Bank of Romania, as a resolution authority, the credit institution provides assistance in drafting and updating the resolution plan (article no. 53).

The law also regulates the very frequent situations in which the supervised entities are part of a financial group.

In particular, the law stipulates that, in the absence of a joint decision between the resolution authorities, the National Bank of Romania, as the group-level resolution authority, adopts its own decision on the group's resolution plan, soundly supported and taking into account the viewpoints and reserves of the other resolution authorities, and notifies the parent company in the European Union of the decision taken (68th article).

5.1.1. Intragroup financial support

In order to overcome hard financial times, credit institutions and entities subject to financial supervision that are part of a financial group may resort to the conclusion of intragroup financial support agreements.

In particular, financial institutions which are included in consolidated supervision within the European Union may conclude intra-group agreements on the granting of financial support to any party of the agreement that meets the conditions for early intervention under the law.

5.1.2. Financial Support Agreement

Under the law, the intra-group financial support agreement may cover one or more subsidiaries of the group and may provide financial support from the parent company to its subsidiaries, from its subsidiaries to the parent company, between subsidiaries within the group that are party of the agreement or any other combination of the parties of the agreement.

The Financial Support Agreement may take the form of a loan, the provision of personal guarantees, the provision of assets for use as collateral or any combination of these forms of financial support, in one or more transactions, including between the beneficiary and a third party.

6. Early intervention

General notions

A range of measures that can be taken in the implementation of the financial resolution are the early intervention measures.

In this respect, article no. 149 of the law stipulates that, when a credit institution infringes or, due to, among other things, a rapid deterioration in the financial situation, is likely to breach the requirements of Regulation (EU) no. 575/2013, Government Emergency Ordinance no. 99/2006 and the regulations issued by the National Bank of Romania on their application, capital market provisions transposing Title II of Directive 2014/65 / EU or any of the provisions of art. 3-7, art. 14-17, art. 24, 25 and 26 of Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets may, as appropriate, shall take at least the following measures:

a) require the management body of the credit institution to implement one or more arrangements or measures set out in the recovery plan or to update such a recovery plan when the circumstances which led to the early intervention differ from the assumptions set out in the initial recovery plan and implement one or more of the arrangements or measures set out in the updated plan within a certain time frame, in order to ensure that the conditions reffered to in the introduction of the article no longer apply;
b) request the organs of management the credit institution to examine the situation, identify the measures to overcome any identified problems and to elaborate an action program to address those issues and a timetable for their implementation**;**
c) require the management body of the credit institution to convene a general meeting of the credit institution's shareholders or, if the management body fails to comply with this requirement, to directly convene the meeting and, in both cases, to determine the agenda of the meeting and demand that certain decisions be taken into account for their adoption by the shareholders;
d) request for the replacement of one or more members of the organs of management or senior management body of the credit institution(if they are found unfit to perform their duties according to the Law) ;
e) request the organs of management of the credit institution to draw up a plan of debt restructuring with all or part of the creditors of the credit institution, in accordance with the recovery plan, as appropriate;
f) request changes to be made to the business strategy of the credit institution;
g) request changes to be made to the legal structure or operational structure of the credit

institution**;**

h) obtain, including through on-the-spot inspections, and provide the National Bank of Romania as the resolution authority, all the necessary information in order to update the resolution plan and to prepare a possible resolution of the credit institution as well as to perform an assessment of the assets and liabilities of the credit institution, in accordance with the legal provisions.

For the purposes of the Law (article 149 (2)), the rapid deterioration of a credit institution's financial situation includes a deterioration in liquidity, an increase in indebtedness, on non performing loans or concentration of exposures, assessed on the basis of a set of indicators, which may include the requirements of credit institution's own funds plus 1,5 percentage points[6].

7. Replacement of the senior management body and governing body

Preliminary remarks

Another measure that could be taken by the resolution authority is the replacement of the senior management body and the governing body of the entity.

In particular, as stipulated in the art. 152 of the Law, in case of a significant deterioration in a credit institution's financial situation or when there are serious breaches of the credit institution's laws, regulations or instruments of incorporation or serious administrative irregularities and if the other measures that have been taken in accordance with the law are not sufficient to put an end to this deterioration, the National Bank of Romania may request the replacement of the senior management body or the governing body of the credit institution as a whole or some of its members. Executive management can be replaced by a temporary administrator or a special administrator as we will see in the following chapter.

7.1. Appointment of a temporary administrator

As stated above, one of the measures that can be used is the appointment of a temporary administrator. The Temporary Administrator shall be appointed if the replacement of the senior management body or the governing body is insufficient to overcome the difficult situation.

In particular, the National Bank of Romania, as the competent authority, may designate one or many temporary administrators of the credit institution, including the Bank Deposit Guarantee Fund.

The National Bank of Romania may appoint any temporary administrator either to temporarily replace the governing body of the credit institution or to temporarily work with the governing body of the credit institution.

The responsibilities of the temporary administrator and the way of working together with the bodies of the institution subject to the resolution are determined by the National Bank of Romania.

Responsibilities may include some or all of the powers of the management body of the credit institution in accordance with the constituent instruments of the credit institution and national applicable law, including the power to exercise some or all of the administrative functions of the credit institution's governing body.

The National Bank of Romania may request that certain actions of the temporary administrator be subject to its prior approval and demand the latter to prepare reports on the financial position of the credit institution and on the actions undertaken during its term of office.

The appointment of a temporary administrator must not exceed one year. This period may exceptionally be renewed if the conditions for appointment of the temporary administrator continue to be met (article 159).

7.2. Appointment of a special administrator

The National Bank of Romania, in its capacity of resolution authority, may appoint a special administrator[7] to replace the governing body of the institution subject to the resolution, in which case it shall make its appointment public on its official website. The Special Administrator must have the necessary qualifications, knowledge and expertise to perform his / her duties. The Bank Deposit Guarantee Fund may be appointed as a special administrator (article 194 of the Law).

The Special Administrator shall have all the powers of the general meeting of the shareholders and the governing body of the respective institution, which will be undertaken under the strict supervision of the National Bank.

The mandate of a special administrator shall not exceed one year. The mandate may be renewed for periods of up to one year. The law takes into account the mandate of the special administrator, but in reality it is a factual procedure of special administration.

The fate of the temporary administration and special administration procedures depends on the results achieved by the credit institution to which they have been set up. If the financial and management crisis

[6] It is noted that the "rapid deterioration of the financial situation" within the meaning of the financial and banking regulations concerns the state of insolvability of the entity concerned.

[7] The financial administrator of the bank resolution procedure is not to be confused with the special administrator established by the Law no.85/2014, either because the latter is elected by the associates / members of the insolvent debtor in a judicial procedure rather than administrative and may be, in principle, any individual. For more details, see St. D. Carpenaru, M.A. Hotca and V.Nemes, op.cit.p.156 et seq.; R. Bufan (collectively), op. Cit., P. 171 et seq.

has been overcome, then the proceedings will be lifted and the institution will resume its activity under the leadership of its own administration and management bodies, and if the procedures fail, bank resolution procedure or even bankruptcy will be put in place[8].

8. Bank resolution procedure

8.1. Preliminary clarifications

The resolution procedure is an extreme procedure to be applied in the event of a major financial difficulty and includes specific objectives, conditions and rules for setting up, running and finalizing.

For the purposes of the Law (article 181), a credit institution is deemed to enter or is likely to enter into a state of major difficulty if at least one of the following conditions is met:

a) the credit institution violates the requirements underlying the maintenance of the authorization or there is objective evidence that they will be violated in the future;
b) the assets of the credit institution are lower than the debts or there are objective elements on the basis of which it can be determined that this will happen in the near future;
c) the credit institution is unable to pay its debts or other obligationswhen due, or there are objective elements that can determine that this will happen in the near future;
d) an exceptional public financial support is required.

According to the Law, the National Bank of Romania, in its capacity as resolution authority, when it applies resolution instruments, takes into consideration the objectives of the resolution and chooses those tools and competencies that allow the highest possible achievement of the objectives considered to be relevant in every single situation.

8.2. The objectives of the bank resolution

The main objectives of the resolution are regulated in the art.178 of the law.

Thus, according to the cited rule, the objectives of the resolution are as follows:

a) ensuring the continuity of the critical functions;
b) avoiding significant adverse effects on financial stability, in particular by preventing the contagion, including within the market infrastructures and by maintaining market discipline;
c) protecting public funds by minimizing reliance on exceptional public financial support;
d) the protection of depositors covered by the deposit-guarantee legislation and investors subject to the provisions for compensation under the capital market legislation;
e) protecting clients' funds and assets[9].

8.3. Conditions for initiating the resolution procedure

According to the Law, the National Bank of Romania undertakes a resolution action on a credit institution only if it considers that the following conditions are met cumulatively:

a) The National Bank of Romania determined, in its capacity as competent authority, that the credit institution is entering or is likely to enter into a state of major difficulty;
b) Given the time horizon and other relevant circumstances, there is no reasonable prospect that the state of major difficulty could be hindered in a reasonable period of time, through alternative measures coming from the private sector, including measures taken by an institutional protection scheme, or through supervisory measures, including early intervention measures or measures to reduce the value or convert the relevant capital instruments;
c) The resolution action is necessary from the public interest point of view.

A resolution action is considered to be of a public interest if is necessary to achieve one or more objectives of the resolution , is proportionate to one or more objectives of the resolution and the liquidation of the credit institution according to the insolvency proceedings applicable to credit institutions would fail to achieve the objectives of the resolution to the same extent (article 182).

8.4. Bank resolution tools

According to the provisions of art. 216 of the Law no. 312/2015, the banking resolution instruments are the following:

a) selling the business;
b) the brigde-institution tool;
c) the asset separation tool;
d) the bail-in.

As with the other measures, the resolution instruments are put in place by the National Bank of Romania in its capacity of resolution authority.

8.4.1. The tool for selling the business

General notions

Under the Law, the instrument of selling the business consists of the transfer of shares or any other proprietary instruments, as well as any assets, rights or

[8] For details on bankruptcy of credit institutions, see St. D. Carpenaru, M.A. Hotca and V. Nemeş, op. cit. P.530 et seq .; R.Bufan (Collectively), op.cit., P. 850 et seq.

[9] The objectives of the banking resolution are similar to the purpose and goals of pre insolvency proceedings, D. Carpenaru, M.A. Hotca and V. Nemeş, op. Cit. P.22 et seq .; R. Bufan (collectively), op cit. p. 91 et seq.

obligations of an institution subject to the resolution or all of them.

The transfer for the sale of the business is operated by the National Bank of Romania and can be made in favor of a buyer who is not a bridge institution.

A peculiarity of the sale of the business is that, according to the Law, the transfer of shares, property instruments or assets takes place without the consent of the shareholders of the institution subject to the resolution or of any third party other than the buyer, and is not subject to any procedural requirements laid down by applicable company law or capital market legislation.

However, in all cases, the business transfer operation is subject to the following principles (article 237):

a) the bid should be as transparent as possible and must present as accurately and fully as possible the obligations, shares or other property instruments proposed for sale;
b) the sale procedure must not unduly favor or discriminate any potential buyer;
c) the transfer must be free of any conflict of interest;
d) must not give any unfair advantage to any potential buyer;
e) must take into account the need for the resolution action to take place rapidely;
f) the aim should be to maximize, as much as possible, the sale price of the shares or other instruments of ownership, assets, rights or obligations concerned.

In this respect, article 228 of the Law stipulates that the National Bank of Romania may, with the consent of the buyer, undertake the transfer powers in respect of the assets, rights or obligations transferred to the buyer in order to transfer assets, rights or obligations back to the institution subject to the resolution, or shares or other ownership instruments, back to their original owners, and the institution subject to the resolution or the original owners has/have the obligation to take back any such assets, rights or obligations, shares or other proprietary instruments.

8.4.2. Bridge institution tool

Preliminary remarks

The bridge institution tool is still a sale / transfer of business but this time to a special entity, known as a bridge institution.

To this end, article 239 of the Law provides that the National Bank of Romania is empowered to transfer shares or other instruments of ownership and any assets, rights or obligations of one or more institutions subject to resolution or all of them, to a bridge institution.

As a result, if the transfer of shares / titles of ownership, rights and obligations is made to a bridge institution then the rules are in force and we are in the presence of the resolution tool called "bridge institution", and if the transfer is made to any other entity, the rules are also in force and we are in the presence of the resolution tool called "selling the business".

The setting up of a credit-bridge institution is subject to special rules derogating from the common law of financial institutions and other entities with legal personality.

By law, the bridge institution is a legal entity which meets several requirements.

Thus, in terms of the capital it is wholly or partly owned by one or many public authorities and the bridge institution is controlled by the National Bank of Romania. It follows that, from the perspective of the shareholders, the public institution can be fully owned by the state or, at most, a joint one, that is, of public and private participation. In the case of a joint venture, the National Bank will decide on the proportion of holdings to be set up in the bridge institution. In other words, the set up of a bridge institution with exclusive private participation is excluded.

Also regarding the capital, according to art. 260 of the Law, the National Bank of Romania may authorize a credit-bridge institution with a share capital below the level provided by art. 11 of the Government Emergency Ordinance no. 99/2006[10] but which cannot be less than the equivalent in lei of 1 million Euros. In this case, the National Bank of Romania shall notify the credit-bridge institution and the European Commission, together with the motivation for the certain level of the share capital.

Regarding the shareholders, it is expressly stipulated that, by way of derogation from the provisions of Law no. 31/1990, a bridge institution authorized according to the provisions of Government Emergency Ordinance no. 99/2006, may be formed as joint-stock company with a sole shareholder.

The Law also stipulates that the Bank Deposit Guarantee Fund, in its capacity as administrator of the bank resolution fund, may be a shareholder of the bridge institution.

As to the purpose, such entity is created in order to receive and hold some or all of the shares or other proprietary instruments issued by an institution subject to resolution or some or all assets, rights and obligations of one or many institutions subject to the resolution (article 240).

Regarding the set up, it must also be noted that according to the Law, the content of the documents regarding the establishment of the bridge-institution is approved by the National Bank of Romania.

[10] According to this text, the National Bank of Romania cannot grant the authorization of a credit institution if it does not have separate funds or an initial capital level at least equal to the minimum established by regulations which cannot be less than the equivalent in RON to 5 million EUR.

8.4.3. Asset separation tool

Overview

This resolution tool involves also a transfer, but only of assets. Unlike the sale of the business and the bridge institution instrument, the asset separation tool applies only to the assets, rights and assets of institution subject to the resolution, excluding the transfer of shares or other proprietary instruments.

The transfer is made to an entity with a special status, called "asset management vehicle".

Specifically, the Law stipulates that, in order for the asset separation tool to be effective, the National Bank of Romania is empowered to transfer the assets, rights or obligations of an institution subject to resolution or a bridge institution, to one or many asset management vehicles. Therefore, assets belonging to an institution subject to the resolution and those belonging to a bridge institution can be separated and transferred.

However, it should be noted that the National Bank of Romania may implement the asset separation tool by creating a vehicle for this purpose only if the following conditions are met:

a) the situation on the specific market for those assets is of such a nature that the winding-up of those assets in insolvency proceedings could have a negative effect on one or many financial markets;
b) such a transfer is necessary to ensure the proper functioning of the institution subject to the resolution or the bridge institution;
c) such a transfer is necessary to maximize the revenues generated from the liquidation (article 272).

As with other resolution instruments, the transfer may take place without having the agreement of the shareholders of the institutions subject to the resolution or any third party other than the bridge institution and is not subject to any procedural requirements stipulated by the applicable Company Law and capital market legislation, as the case may be.

Under the Law, an asset management vehicle is a legal entity whose share capital is wholly or partly owned by one or many public authorities and was created in order to receive, in whole or in part, the assets, rights and obligations of one or many institutions subject to a resolution or a bridge institution (article 269).

The asset management vehicle is permanently subject to control by the National Bank of Romania.

Similar to the bridge institution, the Guarantee Fund may be a shareholder in an asset management vehicle.

8.5. The bail-in tool

An ultimate resolution tool which attempts to overcome the state of financial difficulty is the bail-in tool.

In this respect, the Law stipulates that the National Bank of Romania, as a resolution authority, may apply the bail-in tool in order to achieve the objectives of the resolution and in accordance with the resolution's principles, for achieving the resolution's goal of overcoming crisis moments and avoiding financial collapse in the banking market.

In particular, the Law stipulates that the National Bank of Romania may apply the bail-in tool for the purpose of implementing the resolution only if, in its opinion, there is a reasonable prospect according to which the application of this instrument, together with other relevant measures, including measures implemented in accordance with the reorganization plan will result in the achievement of the relevant objectives of the resolution, as well as the restoration of the long-term viability and financial soundness of the credit institution or entity concerned (article 283 of the Law no. 312 / 2015).

As a precautionary measure, according to the Law, credit institutions are required to comply with and maintain, permanently, a minimum requirement/situation of own funds (capital) and eligible debts, which are set and calculated as the sum of the own funds and eligible debts, expressed as percentage of the total debts and own funds of the credit institution. From a common law perspective, it would be a balance between the assets and liabilities of the credit institution on which the resolution procedure was opened.

In addition to own funds, on special occasions there may be initiated specific procedures applied to the use of financial stabilization instruments. According to the Law, the stabilization instruments are the *tool of financial support through public injection of capital and tool of temporary private-ownership of the State* (art. 355 of Law no. 312/2015)

As regards public financial assistance, the Law stipulates that, in order to participate in the resolution of a credit institution, including by intervening directly in order to avoid its liquidation, to achieve the objectives of the resolution set up in relation to Romania or the European Union as a whole, it may be granted *exceptional public financial support* through additional instruments of financial stabilization, in accordance with the provisions of art. 221, art. 353 and the EU State Aid Framework. Such measures are taken under the leadership of the Ministry of Public Finance as a competent ministry in close cooperation with the National Bank of Romania, as a resolution authority.

With special regard to situations where the resolution authority is the National Bank of Romania, the Law stipulates that, in accordance with the provisions of Company Law no. 31/1990, the Ministry of Public Finance, as a competent ministry, may participate in the bail-in of a credit institution or of an entity subject to resolution by means of equity instruments in exchange for common equity Tier 1 instruments and Tier 1 extra or Tier 2, in accordance

with the requirements stipulated in the Regulation (EU) No. 575/2013.

As regards *the tool of temporary private-ownership of the State*, this is implemented under the coordination of the Ministry of Public Finance, as a competent ministry, when it is considered that the application of resolution instruments would not be sufficient to protect the public interest, when the credit institution has previously been granted a public contribution of capital through the public injection of capital as a financial tool,so that the entity may be transferred to the private ownership of the State. This decision shall be taken after consulting the National Bank of Romania, as competent and resolution authority.

Specifically, the law stipulates that the Ministry of Public Finance may undertake one or more transfer orders in which the beneficiary of the transfer is an entity designated by the competent ministry or a joint stock company entirely owned by the State (Article 357 of the Law no. 312 / 2015).

We must also add that *exceptional public financial support* means in this cases State aid within the meaning of Article 107 paragraph (1) of the Treaty of the functioning of EU or any other public financial support at supra national level(which if provided for at national level would constitute State aid), provided in order to restore or preserve the viability or solvency of entities referred to in Article 1 of the Law.

9. Conclusions

As provided in article 7 paragraph 2 of the Law no.312/2015, the resolution tools are destined to protect the public interest, defending financial stability and shall be applied when the financial/credit institution cannot be wound up under ordinary insolvency proceedings, as this could destabilise the financial system.Having in mind the effects of the latest financial crisis, besides the provided tools for defending the financial stability, competent authorities must also discourage unsustainable financial speculation without real added value and impose higher requirements for systemically important institutions that are able, due to their business activities, to pose a threat to the economy.

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