OVERVIEW OF THE PURPOSE OF INTERNATIONAL BANKING AGREEMENTS

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Abstract

The modern challenges of the banking and financial field have accentuated the rise of cross-border financial transactions. Specific developments in domestic financial markets, and in particular technological progress, have led to the need for international agreements on how international financial and banking activities should be conducted. For such agreements between states, however, there is a long way to go between accepting, initialing, acceding and ratifying the entry into force of a treaty. They range in scope from private cooperation agreements to international treaties signed by sovereign nations, which include clauses on dispute settlement mechanisms as well as conditions of execution. A modern category of such treaties includes clauses that regulate in a certain way certain aspects of the financial-banking field in close connection with international investments, such as the clause that includes the standards of the transfer of funds from the investment treaties. The research methods used for this study are comparative and quantitative, with specific advice to identify the most appropriate scientific solution, converging from the Kapstein approach (1994 - "international cooperation based on home country control") to modern approaches created by the emergence of new ones. financial-banking centers and from protection against economic crises.

Keywords*: banks, treaties, financial-banking institutions, international investments, protection standards.*

JEL Classification*:* E50, G21, G24, K33

1. Introduction

International agreements (treaties) are playing an increasingly important role in the field of banking finance. It is almost impossible to discuss banking contracts without considering the treaties with a direct impact on the banking field, as they have a vocation of priestly rank. It is a mechanism built similar to the international investment mechanism, an argument for which there are many traditional interferences between the two subjects: banks and investments.

These increasingly common treaties in the field of banking set out: multilateral, regional or bilateral objectives; the rules of operation of the institutions involved, the decision-making procedures and the relations between the parties. These are the starting point for legislation, known as "primary legislation". The body of legislation derived from the principles and objectives of the Treaties is known as "secondary legislation". This includes regulations, directives, decisions, recommendations and opinions, as we find in the European Union. Without entering into the debates of monism-dualism or elements of objective law, we have now seen how certain treaties have binding force both between States parties and for state bodies, natural or legal persons[2]. The doctrine has been of the view that, in this case, there would be no need for specific procedures for the applicability of the treaty in national law[3], issues that fall within the scope of discussions on jus cogens, and which remain open to further research.

2. Specific beginnings and evolutions

To begin with, we note that the banking treaties are, in fact, attempts to standardize international banking regulations. The Basel Accords, for example, refer to a set of banking rules set by the Banking Supervisory Committee of Basel[4]. Whether and to what extent the Basel Accords are still relevant or not, specialists will continue to debate the issue. The main purpose of some banking

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[2] This category includes examples of investment treaties, including in and in the field of banking.

[3] L. Cavare, *Traité de droit international public positif,* 3. éd, t. II, Paris, 1969, pp. 88, 89 and 168.

[4] See Florin Georgescu, *Basel II - O nouă etapă pentru modernizarea sistemului bancar românesc / Basel II- A new stage for the modernization of the Romanian banking system*, presentation on the occasion of the EU-COFILE event (European Union Finance & Banking Lectures project), BNR, 2005.

treaties is ultimately to establish a set of measures that will allow for a very good functioning and organization, as well as ensuring (banks) that banks have sufficient funds to meet their financial obligations in order to survive. financial and economic crises. These provisions cover the final requirements, financial requirements and limitations on the types of banks that may be subject to investment. Basel I has been said to be an insufficiently flexible framework to capture the full spectrum of credit institutions 'risk profile, with an emphasis on Basel II, which allows for a more flexible framework for setting capital requirements appropriate to the institutions' credit risk profile.

The beginning of this stage was marked by institutions that significantly influenced the banking activity: the Institute for International Finance, the Bank for International Settlements, the Cooke Committee and other supervisory groups, the Community Contact Group European Economic Community (Contact Group of the European Economic Community), joined by the International Monetary Fund (IMF), the World Bank, the Paris Club and the advisory committees of private banks.

Knowledge of international law is becoming essential from now on, amid a continuous internationalization of the banking system, conditions in which national banking supervision no longer provides useful legal conditions to regulate the operations of banks. Added to all these are bank failures, the dramatic and unlimited increase in private lending to developing countries. Against this background of financial-banking reforms, the identification of appropriate solutions has been initiated which, together with the efforts of international cooperation between banking supervisors, should lead to the best possible international banking supervision[5].

With regard to international financial cooperation, the idea was supported that cooperation in this field could be conceptualized as a product of power and purpose; in particular, the combination of power in the US (and to a lesser extent British) financial market with the common or convergent purpose of banking supervisors to provide greater financial stability to their home markets while addressing competitive concerns In all situations, a cooperation based on harmonization between the multitude of concepts and knowledge acquired indirectly increases, as stated, the probability of general stability in the international banking system[6].

The ideal of harmonizing banking supervision was the evolutionary step towards the creation and regulation of the common market in banking, as provided for in the 1957 Treaty of Rome[7]. In 1977, the EEC Council of Ministers adopted the First Banking Coordination Directive, which set out the minimum authorization criteria for credit institutions, the uniform calculation of prudential solvency and liquidity rates (initially for observational purposes only) and details of the Advisory Committee. banking role to support further coordination efforts. This was followed by the 1983 Consolidation Directive, which provided for the supervision of banks on a consolidated basis[8].

This was followed by Basel III, a set of reforms, measures (strengthening the regulation, supervision and risk management of banks) agreed at international level developed by the Basel Committee on Banking Supervision in response to the 2007-2009 financial crisis. The consolidated Basel framework, which includes the minimum standards applicable to internationally active banks and includes all current and future standards of the Basel Committee on Banking Supervision. These standards are to be applied by members in their jurisdictions over a period of several steps.

Thus, in 2021, the European Commission will adopt a revision of EU banking rules (the Capital Requirements Regulation and the Capital Requirements Directive), which are important for banking reform, both for Europe's recovery from the COVID-19 pandemic and for the transition to climate neutrality. In addition to the revised standardized approach to credit risk, in addition to exposures to certain statutory programs, the situation of subordinated debt and equity (excluding

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[5] James V. Hackney & Kim L. Shafer, *The Regulation of International Banking: An Assessment of International Institutions,* 11 N.C. J. INT'L L, 1986, p.475.

[6] See Ethan B. Kapstein, *Governing the Global Economy: International Finance and the State*, Cambridge, Ma.: Harvard University Press, 1994.

[7] S. Muller, *Legal Framework for International Supervision: The EEC Model*, 8 Issue Bank Reg., 1984, pp. 36, 38 and 39.

[8] Seventh Council Directive of 13 June 1983 pursuant to Article 54 (3) (g) of the Treaty establishing the European Economic Community, on consolidated accounts. Member States have been required to remove all legal barriers, including national banking laws and regulations, to the exchange of information necessary for enhanced supervision. To support enhanced supervision, the Banking Advisory Committee has introduced a new set of observation rates to cover solvency, liquidity and profitability.

amounts deducted), "unlisted speculative shares", and all other exposures of the shares[9]. In this way, the implementation of the Basel III agreement has been completed as an example at EU level[10].

Also, in this chapter for developments specific to international banking agreements, the role of the World Bank finds its place. As an organization, it is made up of 189 member states or shareholders, who are represented by a board of governors, the best decision-makers of the World Bank. Founded in 1944, the International Bank for Reconstruction and Development - now known as the World Bank - has expanded to five development institutions. Initially, his loans helped rebuild the devastated states of World War II. It later moved from reconstruction to development, with a strong focus on infrastructure such as dams, power grids, irrigation systems and roads. With the founding of the International Finance Corporation in 1956, the institution became able to lend to private companies and financial institutions in developing countries. The International Development Association, established in 1960 (the IDA Articles of Agreement were drawn up by the Bank's Executive Directors, and came into force on September 24, 1960), placed greater emphasis on supporting the poorest states, part of a constant change. towards the main goal: eradicating poverty. The subsequent launch of the International Center for the Settlement of Investment Disputes (The ICSID Convention was established by a multilateral agreement and entered into force on October 14, 1966) and the Multilateral Investment Guarantee Agency (The MIGA Convention was discussed by the Bank's Executive Directors on the The Convention came into force on April 12, 1988) further complemented the Bank Group's ability to connect global financial resources to the needs of developing countries[11].

In its structure, it is particularly important in the creation of case law as a source of law in modern matters such as international investment, guarantees and loans. The World Bank through its Bank Group organizes talks between its member states on critical issues such as climate change, war crises (remember that it was created for this purpose after World War II), pandemics and forced migration.

The IBRD Agreement was drawn up at the United Nations Monetary and Financial Conference in Bretton Woods, New Hampshire, July 1-22, 1944[12].

Another category, cross-border financing agreements, is regulated by SWIFT[13], under the umbrella of the International Organization for Standardization (ISO). The emergence of such international agreements has led to the development of accepted standards in the banking sector and established various categories of messages, including interbank transfers of funds, foreign exchange transactions and securities transactions.

Currently, much attention is being paid to technical issues related to the use of the Internet for financial transactions and possible standards for the use of prepaid cards with stored value or for cryptocurrencies. A proposal for a Regulation of the European Parliament and of the Council on cryptocurrency markets has been developed at European Union level since 24 September 2020. The purpose of this Regulation is to create a harmonized framework at Union level for the issuance and trading of cryptocurrencies or cryptocurrencies[14]. These issues have recently become one of the top

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[9] See Basel Committee on Banking Supervision, *High-level summary of Basel III reforms,* Ed. Bank for International Settlements, 2017, pp. 9-11.

[10] This agreement was concluded by the EU and its G20 partners in the Basel Committee on Banking Supervision to make banks more resilient to possible economic shocks, as we have shown in the content of this article.

[11] See the History of the World Bank, available here: https://www.worldbank.org/en/about/history, accessed on 15.03.2022.

[12] The governing document entered into force on 27 December 1945 and was amended three times: 17 December 1965, 16 February 1989 and 27 June 2012.

[13] SWIFT, the Society for Worldwide Interbank Financial Telecommunications, is a commercial organisation set up in 1973 and is maintained by financial organisations throughout the world. Relations between SWIFT and SWIFT users are governed by contractual arrangements. Since SWIFT rules are incorporated into interbank contracts, the influence of SWIFT on the harmonisation of such contracts has been substantial. See Heinrich, Gregor (1996), apud William R. White, *International agreements in the area of banking and finance: accomplishments and outstanding issues,* Ed. Bank for International Settlements Monetary and Economic. Department Basle, 1996, p. 8.

[14] In Romania, in the provisions of art. 2 lit. (1) of Law no. 129/2019 on preventing and combating money laundering and terrorist financing, virtual currency is defined as “a digital representation of value that is not issued or guaranteed by a central bank or a public authority, it is not necessarily linked to a legally established currency and does not have the legal status of currency or currency, but is accepted by individuals or legal entities as a medium of exchange and may be transferred, stored and traded electronically”. We

priorities for regulators, whether we are talking about governments, central banks, supervisors, the International Monetary Fund or the G20 summit agenda.

The positions are not aligned: some send warnings or opt for a ban, others express their intention to create a favorable legal framework. However, the importance of blockchain technology, which is at the origin of cryptocurrencies, is unanimously accepted, being recognized for its potential to radically transform production systems, business models, the labor market, etc., but also the way of governing. Malta has recently launched multi-level regulatory legislation on the launch of ICOs, exchange and trading platforms, with the aim of becoming a "blockchain island". France also announced through its finance minister that it wants to create the legal framework for the ICO so that it will be the first major financial center to have a regulatory framework for companies that want to launch an ICO. On the other hand, China has taken a radical stance by banning cryptocurrency exchanges and conversions.

However, as the vast majority of states leave regulation in a gray area: neither a ban nor a legal framework is adopted, a new banking treaty is expected, which would establish a unification of the regime of international transactions that must be subject to unique standards of treatment, to avoid any discrimination.

Finally, international agreements developed in the private sector should be mentioned in the form of codes of conduct established by members of different trade associations defining "best practices" in areas such as participants' financial resources (adapting them to bear the risks involved), policies and procedures related to transactions (control and compliance, evaluation procedures, etc.), the relationship between participants transaction mechanics and acceptable standards (manipulation, bribery, rumors, etc.).

Emphasize the importance of the provisions of the Banking Treaties, we conclude by saying that the International Investment Bank was established and operates as an international organization under the Intergovernmental Agreement establishing the International Investment Bank of 10 July 1970, registered with the Secretariat of the United Nations. on 1 December 1971 under number 11417, with periodic amendments and rewordings, together with the Charter of the Bank, which is an integral part of the Agreement. The agreement establishing the IIB is an international treaty. Given that the Member States of the Bank are the Republic of Bulgaria, the Republic of Cuba, the Czech Republic, Hungary, Mongolia, Romania, the Russian Federation, the Slovak Republic and the Socialist Republic of Vietnam, its functioning is expected to be severely affected by the Russian – Ukraine war, an issue that will raise several legal issues and will certainly lead to new changes in international banking agreements.

3. Conclusions

These are just a few examples of the importance of the subject. The existence of international banking agreements, through the basic principle of cooperation, has the potential to solve a number of current problems facing the banking system and, last but not least, the financial system.

As the moment is one of international crises, new treaties or changes to existing ones are expected. To the extent that conflict situations make it more difficult for the cross-border bank to play a normal and constructive role in the global process, international financial-banking lawyers have a duty to deal directly and openly with the connections between conflicts on both sides of the balance sheet. The political and economic risks of expropriation and hyperinflation in Europe in the 1930s and in many of the developing countries after World War II can serve as an example of finding the best solutions for all aspects that are expected to be covered by international banking agreements[15].

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emphasize that this type of currency should not be confused with electronic money, which is the subject of Law no. 210/2019 on the activity of issuing electronic money.

[15] For the most comprehensive analysis of freeze orders and Eurodollar deposits, see Smedresman & Lowenfeld, *Eurodollars, Multinational Banks and National Laws*, 64 N.Y.U. L. REv. 733, 762-74 (1989). See also Rutzke, *The Libyan Asset Freeze and Its Application to Foreign Government Deposits in Overseas Branches of United States Banks: Libyan Arab Foreign Bank v. Banker's Trust Co.*, 3 AM. U.J. INT'L L. & POL'Y 241 n. l (1988) (discussing the President's powers to order asset freezes in wartime under the Trading With the Enemy Act of 1917, 50 U.S.C. app. § 5(b)(1)(B) (1982), and in peacetime under the International Emergency

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