

Current Legal Issues of Bank Regulation - Resume

This thesis paper deals with issues that can be found in relation with bank regulation. At present, globalized world, banks as important financial intermediaries play a major role. Banks are present in our daily lives and whether or not we want to, they facilitate our everyday operations with the money, investment of free monetary resources, and also borrowing of money. We got accustomed to the convenience that the use of various banking services provides. Equally important are the services of banks for businesses enterprises, various investment companies and funds, and also the countries themselves (the governments). Failure of this system, now that so many subjects are dependent on it, could have far-reaching negative consequences. The bank regulation and its instruments serve as a protection against the rise of adverse consequences. With the growing importance of banks in our society, the importance of their regulation grows as well. But even this may not represent perfect protection and bank regulation may conceal other unforeseen problems.

This thesis on "Current legal issues of bank regulation" reflects the legal status of May 31 2012 and is trying to highlight the problems that occur in specific instruments of banking regulation. The aim of this work is not to find an absolute solution to these problems, but rather to point out what are the negatives and in some cases offer own ideas about possible ways to eliminate these shortcomings. The problems identified in this work are found not only at banks and bank regulation, but also in other areas of the economy and therefore we can bring some problems to similar phenomena in other economic spheres. Also, a problem that occurs at one of the instruments of banking regulation may similarly occur with other instruments.

Capital adequacy is one of the most important instruments of banking regulation and the proper setup, operation and understanding is essential for the healthy development of this sector. Banks over-relied on the rules set in regulation, especially on ratings of agencies, and because of this trust (adverse selection) they did not develop their own risk assessment analysis, to which they were urged by Basel II itself. On the other hand, banks in meeting the capital adequacy standards also began looking for ways to bypass it, leading to smuggling of risk through securitization products, in which the significant role was played by rating agencies. Consequently the financial market received complex securitization products with hidden risks and these were eventually bought by other banks.

To blame banks and rating agencies for the crisis would be very simplistic. The problem was also the rules themselves, which did not deal with the problem of conflict of interest, failed to disclose the risks of structured products and allowed moral hazard. The legislation, which has been adopted since (Regulation. 2009/1060 /ES, CRA), or is currently implemented and planned (the rules of Basel III) seeks to address these problems. The results of this work are still early to evaluate, but it can be expected that the impact will be more likely positive. It is also important that the authorities responsible for preparation of the regulation and also those which are responsible for supervision of banks and related sector would not overestimate the rules themselves, because banking is not static but it is constantly evolving, so together with its changes should the rules of banking regulation adequately respond to change as well.

Kľúčové slová:

banky, banková regulácia, Basel, ratingové agentúry, problémy, konflikt záujmov, morálny hazard

Keywords:

banks, bank regulation, Basel, rating agencies, problems, conflict of interests, moral hazard