"ALTERNATIVE FINANCIAL AND BANKING DISPUTE RESOLUTION" CONFERENCE - 05.10.2017

Distinguished audience,

I have this morning the privilege to speak in Aula Magna of the Law Faculty before the legal elite of the country. I am fully aware that great professors have taught classes here in the Faculty of Law. Some of them still do. It is a chance for us to debate, in this setup, a topic such as "Alternative financial and banking dispute resolution", with such a high intellectual professional profile participation.

The Government Ordinance no. 38/2015, an item of legislation which regulates alternative resolution of disputes between consumers and traders provide that the National Bank of Romania is represented in the Steering Board of the Alternative Banking Dispute Resolution Center. This is one of the serious reasons for me to appear before you.

There is a law. And there is an institution which is operational. With these, we have aligned to the realities of the European Union. This law and this institution, together, allow that in Romania too, before involving courts or even circumventing their judgments, the bank, as lender, and the client, as debtor, are afforded equal rights to information and guidance. This reality per se is a huge step taken forward in alternative resolution, because too many disputes occur due to lack of information, or misunderstanding thereof. Alternative resolution help reduce the costs for both parties. And this reduction, if we are genuinely concerned for low fees and interest, is significant.

I, as a member in the structures of the Central European Bank, I am somehow better acquainted with the developments and concerns of the European Union. For this reason I will continue by tackling the manner in which the interest for striking an optimal balance between lenders and consumers of financial services has been lately and gradually increased, strongly driven also by alternative resolution.

The concern for setting up and in motion such a mechanism dates, across the EU, back in the early 90s. The "Green Paper on access of consumers to justice and the settlement of consumer disputes in the single market" documented in 1993 "the urgent need for a Community action to improve the status quo". Back in 1996, the European Parliament issued a resolution to urge the European Commission to draw up proposals of procedures in the field of out-of-court resolution of disputes between consumers and traders. Between 1998 and 2001, the European Commission issued two recommendations to advance this mechanism for consumers. As of 2000s, the out-of-court resolution of disputes was referenced in a number of European directives.

In 2004, Directive 2004/39/EC obliged the Member State to foster issuance of efficient procedures for management of complaints and remedies, so as to allow out-of-court resolution of disputes involving investment services and ancillary services rendered by investment enterprises. Remarkably in this respect is also a Report of the World Bank of 2009 which showed that alternative resolution could help build the trust of consumers in financial services. Meanwhile, considering the increasingly widespread disputes presented to courts of law, the very banking

industry saw the alternative approach as a solution for restoring balance in the relation between consumers and banks, and cutting the down the costs with these disputes.

However, in 2011, when a first line was drawn, it was found that while the concern for providing consumers with a high level of protection had increased, there were still plenty of shortcomings caused by the insufficient coverage of alternative solutions, the poor information provided to consumers, and the poor quality of the procedures. Still, some successes could be pinpointed in terms of both the form of organization, and competences.

An important step was taken on 18 June 2013, when the Official Journal of the European Union published the Directive 2013/11/EU on alternative dispute resolution for consumer disputes, which imposed the obligation for the Member States to ensure the provisions laid down by law, regulation or administrative action required for national transposition of the Directive.

In this context, the National Bank of Romania set up an informal working group with participation of the representatives of consumer associations, professional associations, the Ministry of Justice, the Financial Supervisory Authority, as well as specialists from the financial and banking sector. Involvement of the National Bank of Romania, including by hosting debates on this topic, was seen as an attempt to defuse the relations between consumers and banks, especially considering that the representatives of the central bank had repeatedly argued, since 2013, that the discontent or uncertainties of consumers in connection with their agreements had to be addressed, or at lease attempted to address out of courts.

At European level, Directive 2014/17/EU pays a particular attention to execution and compliance with the loan agreements offered to consumers for residential immovable property. Faced with new demands and, in particular with those laid down under Directive 2014/17/EU, the National Bank of Romania has shown an even increased interest to counter the lending risk.

Consumers, defined under Directive 2014/17/EU, by reference to Article 3(a) of Directive 2008/48/EC as “natural persons who are acting for purposes which can be regarded as outside their trade or profession”, need to be afforded a high level of protection when they execute loan credit relating to immovable property. In fact, they are the targeted beneficiaries of this European legislation. They and not the companies which are bound to employ risk specialists and protect themselves. And the banking information due to reach the body of consumers, including by advertising, has to prevailingly regard the lending, currency and market risks, and correct valuation of the immovable property.

As the increased public attention to the topic was easily foreseeable, alongside strong emotions revolving around it, the requirements of the Directive are explained in annotations with a sensitive psychological load. For instance: “family home, a valuable asset which is most of the time obtained with a loan which pledges the lifetime work of the family”.

The Alternative Banking Dispute Resolution Centre has a law. A law which was adopted in due time, in September 2015. Now, this forum, as we already explained, has already become operational. However, Directive 17 of 2014 places a great emphasis also on safety measures. Therefore, these cannot be circumvented. Creditors should obliged to “exercise reasonable

forbearance and make reasonable attempts to resolve the situation through other means before foreclosure proceedings are initiated". The term "reasonable" appears all over again as a leitmotiv. A keyword of Directive 2014/17/EU, which comes to underline that Member States are obliged, under comprehensive legislation, to imprint healthy, rationale and balanced judgment across the entire banking system.

But mind this: Directive refers to helping people who cannot repay their loans. There is no paragraph, phrase or word there to suggest that a lifebuoy is also thrown at those who do not want to pay. Protection should only be afforded to those who cannot pay.

The letter and the spirit of the Directive urge the banks to engage in an efficient process of domesticating the market of financial services. Members States are also urged to come up with laws to improve the relation between banks and consumers of financial services. But, this without shifting the legal order and, particularly, without breaching the natural economic legitimacies. Manifestly, the alternative dispute resolution mechanism need to be adapted to these requirements of the Directive. Of course, within the limits laid down under the law.

The trust of the litigants can only be built when operation of the Center relies on credible professionalism and chosen morality - a prerequisite for the reasonability demanded by the Directive. Flexibility of the parties to accept or not the solutions offered, plus efficiency, impartiality and transparency are other factors for the success of the Center.

All the parties - the National Bank of Romania, the National Consumer Protection Authority, the Romanian Association of Banks and the consumer organizations have reached a consensus in this respect. There requirements are met by working with experts in the financial and banking industry.

The Board members deal with the operation and development policy and strategy of the Center. They are not involved in any review or resolution of disputes, and refrain from influencing or issuing instructions in this respect. Similarly, the Board sets out the resolution procedural rules and the selection criteria applied to the persons who apply to be listed as Conciliators.

Dispute resolution is the exclusive duty of conciliators. These are persons with legal or economic background and training in the financial and banking sector, and have at least 10 years of experience in a legal or economic activity; they enjoy a good reputation and cannot be subject to any pressures which are liable to influence their approach of the dispute.

I strongly believe that alternative resolution of the disputes between banks and their debtors is regulated by a wise law. It is our rule to give life to its letter and spirit in combination with the European Directive 2014/17/EU. And I stop here. But please allow me to conclude by wishing success to this conference, which appears to be an event of pivotal importance. And of reference. Thank you!

Mugur Isărescu, Governor of the National Bank of Romania, Bucharest