

A brief history of the legal regulations on the capital market in Romania

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***Abstract:** Through this article, I have sought to present a brief overview of how this important institution was legally regulated, the capital market in Romania, first in a period prior to the year 1990, with several references to the "Golden Age" and then after this year, when the Romanian capital market has undergone significant mutations that have been fully reflected in the specific legislation.*

***Keywords:** legal regulations; stock markets; capital market; capital institutions; broker; actions; obligations.*

Introduction

From anhistorical and etymological point of view, the name "stock market" comes from the city of Bruges, where the gatherings of bankers and merchants were held at the Hotel des Bourses, named after a senior of the old and noble family van den Boursen who had built it and in whose frontispicethree bags were carved into stone (fr. Bourse). This is where bankers and merchants met to negotiate money, precious metals, securities and commodities. In time, the meeting places of traders received the name of stocks [1].

According to the DEX [2], the word "stock market" has several meanings including that of "institution where securities and foreign currencies are negotiated or where commodity transactions are carried out".

In the same work the notion of capital is presented with two meanings, respectively: "*money, commodities, material goods in the genre*" and, the second meaning of "*money, amount (large) of money (invested in a business)*" [3].

The notion of "market" in the version given by the Political economyrepresents: "a sphere of movement of goods; Supply and demand for goods" [4].

The capital market represents the totality of the relationships and mechanisms through which the available and dispersed capital of the economy is routed to any public or private entity demanding funds [5].

In the following I will make a brief overview of how this important institution was legally regulated, the capital market in Romania, first in a period prior to the year 1990 and then after this year, date when the capital market in Romania has undergone significant mutations that have been reflected in the full in specific legislation.

I. Legal regulations on the capital market in Romania prior to the year 1990 [6]

The beginnings of commodity and stock markets in our country can be located in the mid-19th century.

Thus, in the year 1839, in the Public Assembly of Wallachia, it was discussed the issue of creatingcommodity exchangesin Bucharest and Braila, under the jurisdiction of a trade union deputy, with the obligation to periodicallyprintthe "medium prices" and the main trade transactions concluded. However, the project has been postponed for several decades.

In the year 1840 was promulgated and implemented the Trade codex of Wallachia which, in the year 1864, was extended to Moldova.

Inspired by the French Code of 1807, the Trade codex of Wallachia consecrated a special chapter forcommodity exchanges, exchange intermediaries and agents [7].

The trade Code of 1840 provided, referring to the intercessors, for them to be appointed by the Lord, and that "... *The result of the haggling and the negotiation of the policies that are committed to the Stock*

decide the course of coins and policies, prices, insurance, transport on land or water, of the state's documents of other such, whose course is to be written down every day whether it has ascended or has descended." It should be noted that even during that period the cumulus of functions was allowed, the same person could be both exchange intermediary and agent. Although meritorious, the approach to drafting such a legislative act as it was the Trade Code of 1840 it remained a purely theoretical one, and it was not applied until the repeal of the Law of 1881 [8].

The union of 1859 led to the specialization of the Great Danube ports: Braila- the main route of export of cereals and other agricultural products, and Galati-import of general goods, as well as timber exports.

In the year 1865, in the Gazette newspaper - Official Journal of the United Romanian Principalities - appears the first draft law for the establishment of trade exchanges in Bucharest, Iasi, Galati and Braila, which included regulating the organization and functioning of these stocks.

The economic development at the time increasingly determined the emergence of an organized framework for the conduct of commercial activities in Romania, which made the Parliament adopt on 1 July 1881 "*The Law on stockexchange, exchange intermediaries and commodities intermediaries*".

The stated purpose of this normative act was "the settlement of transactions of all kinds". The stockexchange was defined as "the assembly of merchants, captains of ships, exchange intermediaries and commodity and product intermediaries".

According to the law, the main operations that were to be carried out at the stock exchange were: "The fair of public and private effects, the fair of actions of various agricultural, industrial and commercial societies, the Fair of landwritings, rural or urban negotiable papers, sale of metallic materials, coins, all kinds of goods, renting of transport vessels, land transport and water, all kinds of transactions relative to continental and maritime trade, inside and outside, Insurance of all kinds. "

According to the provisions of this normative act, the stock markets were established by Royal decree, on the proposal of the Ministry of Agriculture and Commerce and only in cities where the chambers of commerce and industry had sufficient means for the maintenance of the locality and of their staff.

Each stock market was governed by the jurisdiction of the Chamber of Commerce of that county and was to have as its own leader a committee consisting of a *syndic* [9] and four members. They were to be elected by the exchange intermediaries and the patentees of I and II class, and one designated by the Chamber of Commerce. The Secretary of the Chamber also fulfilled the same function for the stock market committee.

The regulation of the trade exchange was adopted by Parliament in December 1881, establishing the functioning of these institutions, the fixation of the stock exchange courses, taxes, the "Terms Fair", the rights and obligations of the exchange intermediaries and others.

Under this law, the first stock markets from the Old Kingdom were founded in Bucharest (1 December 1882), in Iasi, Braila and Galati.

Over time, the volume of transactions proved to be a small one and, the free market courses, agents, intermediaries and some banks who preferred to work directly with customers functioned alongside the official listing.

The Bucharest stock market had a poor activity until the year 1904, being heavily competed, due to shortcomings of an organizational and legislative nature, by a "black stock market" conducted in parallel.

The Law on stock markets, Exchange intermediaries and commodities intermediaries, as amended in 1886 and 1887 (amendments to the syndication of the Exchange agents, but which did not have the expected effect in the development of the stock market activity) functioned until the year 1904, when there was a development of the stock market as a result of the emergence of a new law on the effects of trade-the law on trade exchanges [10] aimed at attracting traders to an organized activity.

This new law allowed the exchange of stock operations both through the official intermediaries and directly through the members of the Stock Exchange Corporation for their own operations, not the intermediate ones.

Through the new law on Trade exchanges, promulgated in August 1904, the "Trade exchange" was defined as "the meeting of merchants, ship captains, exchange and commodities intermediaries for sales and purchases of public and private effects, of any kind of goods and renting bastions."

At the basis of the reform of the trade exchanges in 1904 stood the principle of freedom of transactions in the field of stock exchange. For its application it was created within the stock exchange a new body, called the *Stock Exchange Corporation*, consisting of all traders, industrialists, corporations and credit associations, patentees of class I, II and III, all commercial firms registered with the court, thus abolishing the monopoly of the intermediaries and giving full freedom to trade.

The new law provided for the operation in the country of the following stock exchanges: In

Bucharest – a stock exchange and effects of grain and commodities; In Braila, Galati and Constanta-a stock exchange of cereals, commodities and rental of bastilles; in Iasi and Craiova-one of grain and commodity exchange.

With some oscillations, the Bucharest Stock Exchange operates until the First World War, when its operations cease. Although it worked for a relatively low period, compared with the other European stock exchange, the Bucharest Stock Exchange held an important position in international trade being the only market of international importance for stock negotiations in the Southeast European Union.

In the next period, the socio-political events of the time affect the activity of the stock exchange. Thus, the uprising in 1907 determines a decline in the course of the securities, as well as the Balkan War, 1912-1913, affects the course of the titles, and during the First World War the stock exchange ceased its activity.

In October 1918, the stock exchange reopened, and as a result of the establishment in the 1920-1922 of many enterprises, the stockmarket activity alsodeveloped as a result of a significant presence of foreign capital.

In order to adapt the legislative framework to the new realities resulting from the Great Union of 1 December 1918, a new stock law has been voted in 1929 [11]. It is known that after 1918, in the field of stock, three legal regimes were in force on the territory of Romania: The Law of 1904 in the Old Kingdom expanded in Bessarabia, the Austrian one in Bucovina and the one in Transylvania and Banat.

The Law of 1929, which unified the stock legislation, also brought a series of concepts of unification, and legal solution, imposed by the requirements of the development of the stock market in our country and consistent with international practice.

First, it was better defined the status of the stock markets, which were declared *public institutions*, benefiting from legal personality and autonomy: they were placed under the supervision and control of the Ministry of Industry and Commerce.

An important innovation is the separation of stock exchange of shares and exchanges (i.e. stock exchanges) from the commodity markets.

In the new law, greater attention is paid to the management and organization of the stock exchange, control over operations, recruitment of personnel. In this context, a provision that comes to repair one of the shortcomings of the old legislation is the syndication of the exchange agents on the basis of solidarity. Taken from the French model, this provision was likely to increase the credibility of the stock exchange, as well as its influence in the business and commercial world.

The effects of the new regulation in the stock market plan have been gradually manifested, being affected by the downward trend of the stock exchange both in the country and internationally, so that, at the end of the year 1933, there is a marked optimism on the stock exchange: The courses are increasing, but the volume of the trades still remains low.

The Bucharest stock market negotiated actions and effects in "money ready" operations [12] (those "on term", although admitted by the law of 1929, were not practiced). In 1935, for example, there were quoted in stoke exchange 56 shares of various companies (banking, petroleum, mining, industrial, insurance, transport, etc.) and 77 titles of fixed interest, also called annuity.

After the Second World War, the hope of economic recovery stimulates investment fever, and in the year 1945 the highest level of transactions in the entire history of the stock market record owed, to a large extent, to the effects of monetary inflation.

By the year 1948 the stock market continued its activity after which, as a result of nationalization, its activity was interrupted.

In another historical context, I must say that in the period of the "Golden Age" of Romania, the Law No. 3/1982 on participation, with *social parties*, of the working people of the state economic units at the establishment of the Economic Development Fund [13].

According to the provisions of this normative act, employees in state economic units could own a part of the value of the fixed assets found in the administration of these units, as *a social part*, which compared to the value of the owned social part, they benefited from additional income, in addition to the rights of remuneration due for the work done.

The social side was the property of each employee and was constituted by depositing a sum of money to the Unit's Economic Development Fund.

Deposits in money to the economic Development Fund could not exceed 30 per cent of the value of the unit's fixed assets.

The social side had a minimum and a maximum limit, in the sense that it could not be more than 50,000 lei and less than 10,000 lei, and the value of a social party was 1,000 lei.

The following categories could deposit sums of money with the title of social parts in an economic unit: the management team, the other working staff in the State apparatus, of political and public organizations, educational and social-cultural units, as well as the military cadres, which benefited, in relation to the value of the social share, of additional income under the same conditions as the employees of the respective economic unit.

Participation in the Unit's development Fund, by establishing the social parties, was made on the basis of the *free consent of each, expressed in writing*.

The sums deposited with a title of social part to the Economic Development Fund could be used, on the basis of the decision of the General Assembly of working people, for making productive investments with immediate effects in production, increasing revenues and the benefits of the unit.

Exceptionally, with the approval of the General Assembly, the amounts deposited as social party, insofar as they are available at the Development Fund, may be used to finance the circulating means.

As regards the mechanism of the Constitution of the social part it consisted in that the deposits of each employee were established on the depositor's incomes and the volume of the deposits approved by the General Assembly for the planned year.

The amounts representing contributions to the formation of the social party could be paid in equal or differentiated installments, monthly, at other intervals or in full, in relation to the depositor's option.

The deposits as a social party were done for at least 5 years, and after that period, at the request of the depositor, if the total deposit is at least 10,000 lei, the social part shall be returned wholly or in a staggered manner, in a period of 2-5 years, according to the decision of the General Assembly of working people, depending on the economic possibilities of the unit.

For the sums deposited as a social party, employees benefited at the end of each year from an income determined by the total size of the deposit existing at that date, which is payable from the benefits of the establishment.

The annual income for the employees was 6% calculated from the total size of the deposits, if the unit reached the planned benefits.

In case of exceeding the planned benefits, the annual income may be up to 8%, depending on the amount of the benefits and the profitability obtained, according to the decision of the General Assembly of the working people.

In the event of failure to achieve the planned benefit of the establishment, the employees shall be guaranteed an annual income of 5% in relation to the amounts deposited as a social party.

Incomes obtained by employees in relation to the deposited social part were not taxable.

The amounts deposited by employees as a social party could not be ceded to other persons and could only be pursued for the recovery of the damage caused by offences.

In the case of retirement, depositors could withdraw their social side or continue to maintain it.

Deposits made as a social part could be passed by inheritance, in which case, the heirs could request the restitution of the sums.

Deposits made as social part and the incomes paid are entered in *an individual owner's license of the social party*.

By Decree-Law No. 1/1989 on the repeal of laws, decrees and other normative acts [14] Law No. 3/1982 was the 6th on the list of normative acts repealed stating that "the restitution of the social parties retained to date will be staggered, starting with 1 January 1990, over the next 3 years".

As a conclusion that can be inferred from the adjustments outlined above is that this means of participating of the employees in the profit-sharing of the economic units would have a correspondent in a joint venture society, and the social parties would have had the role of actions corresponding to the concept of the "multilateral developed socialist society" in vogue at that time.

II. Legal regulations on the capital market of Romania after the year 1990

After 1990, as a result of the profound changes in the development of the Romanian production relations, the stock market became a necessity that was first materialized in the establishment of the Romania Commodities Exchange organized under Law 31 of 1990 and the Bucharest Stock Exchange, reestablished in 1995 as a component of the symbolic economy, having important powers in the formation and use of capital [15].

Among the first normative acts approved by the new authorities after the year 1990 and which took into account the creation of a legislative framework of nature to allow both the emergence and further development of capital markets in Romania, was Law No. 31/1990-republished Society Law [16].

According to this normative act, individuals and legal persons may associate and constitute companies with legal personality for the purpose of conducting lucrative activities.

In regulating Law 31/1990, republished, companies with legal personality are constituted in one of the following forms: a) company in collective name; b) Company in simple order; c) Joint stock; D) Joint stock Company and E) Limited liability company.

Over the course of more than 300 articles structured in 9 titles, 20 chapters, 10 sections and 2 sub-sections, the law of companies regulates matters concerning in particular the formation of companies; The company's constituent act, specific formalities for the formation of the company by public subscription, registration of the company; The effects of infringement of the legal requirements for the establishment of society; Functioning of companies; Companies in collective names; Companies in simple order; Joint ventures; *About actions*; About General assemblies; About the company's administration; Unit system; The dualist system; Common provisions for the unitary system and the dualistic system; Financial audit, internal audit and censorship; *About issuing bonds*; About the company registers and the annual financial statements; Joint stock companies, limited liability companies; Modification of the constituent Act; Deduction or increase of social capital; Exclusion and withdrawal of associates; Dissolution, merger and division of Companies; Cross-border merger; liquidation of companies; European society, etc.

As it can be seen the law of companies enshrines explicit rules to *actions and obligations*.

Referring to *actions*, these regulations [17] mainly state that:

- in the stock company, the social capital is represented by shares issued by the company, which may be nominative or at the bearer, character which will be determined by constituent act, otherwise they will be nominative.

- the nominative actions may be issued in material form, on paper, or in dematerialized form, in which case it is registered in the shareholders register.

- the social capital will not be able to be increased and no new shares will be able to be issued until the previous issue has been fully paid.

- nominative actions can be converted into bearer actions and vice versa by decision of the extraordinary general meeting of shareholders. Also, cumulative headings can be issued for more actions when they are issued in material form.

- the shares must be of equal value and shall grant the holders equal rights.

- the conditions under which *preferential actions with the priority dividend without the right of voting* may be issued, and the rights conferred on the holder.

- the preferential actions and ordinary actions could be converted from one category to the other by judgment of the extraordinary general meeting of shareholders.

- ownership of the nominal shares issued in material form shall be transmitted by a declaration made in the Register of Shareholders and by the statement made on the title, signed by the transferor or by the transferee or by their representatives. The ownership of the nominative shares issued in a dematerialized form shall be transmitted by a statement made in the register of shareholders, signed by the transferor or by the transferee or by their representatives. Other forms of transmission of ownership of shares may be provided through the constitutive act.

- ownership of shares issued in dematerialized form and traded on a regulated market or in an alternative trading system shall be transmitted in accordance with the provisions of the capital market legislation.

- ownership of the bearer shares shall be transferred by their simple tradition.

- about the formation of movable mortgages on shares and their registration in the Electronic Archive of Real Estate Guarantees.

- *the actions are indivisible* while a nominative action becomes the property of many people.

- the obligations incumbent on the holders of shares which are the undivided or common property [18] of several persons.

- the conditions necessary for a company to be allowed to acquire its own shares, either directly or through a person acting in its own name, but on behalf of the concerned company.

- the information that will be included by the Management Board in the report accompanying the annual financial statements on the acquisition or alienation of its shares by the company.

The issuing of *bonds* by companies is regulated in article 167 to 176 of the law of companies and comprises provisions relating to:

- the nominal value of a bond.

- the bonds of the same show must be of equal value and give their holders equal rights.

- bonds may be issued in material form, on paper, or in dematerialized form, by sign-up in the

account.

- the nominal value of the convertible bonds in shares shall be equal to that of the shares.
- the bond holders may meet in the General Assembly in order to deliberate their interests.
- the issuing company may not participate in the deliberations of the bond-holders' assembly on the basis of the bonds it possesses.
- the bond holders will be able to be represented by the trustees, other than the administrators, directors, respective members of the Directorate, the supervisory board or the censors or civil servants of the company.
- the duties of the Assembly of bond-holders legally established.
- the reimbursement of bonds shall be made by the issuing company at maturity, and before maturity, the bonds of the same issue and the same value may be reimbursed, by drawing lots, to a sum higher than their nominal value established by the company and publicly announced at least 15 days before the date of the draw.
- convertible bonds may be exchanged in shares of the issuing company under the conditions set out in the prospectus for public tenders.

Also in the year 1990 it was drafted the law no. 15/1990 on the *reorganization of state economic units as self-governing administrations and commercial companies* [19], normative act which marks the beginning of the privatization process in Romania. According to it, the state economic units reorganized and functioned in the form of self-governing administrations or commercial societies.

Self-governing administrations became legal entities and were based on economic management and financial autonomy. They could be established by decision of the Government, for those of national interest, or by decision of the county and municipal bodies of the State administration, for those of local interest

The state economic units, with the exception of those constituted as self-governing administrations, were organized in the form of *joint stock companies or limited liability companies*,

Initially, the social capital of the commercial companies constituted according to the legal provisions was wholly owned by the Romanian state in the form of *shares or social parts*.

The commercial companies, thus established, had a shareholder, namely a holder of social parties, unique to the total or partial transfer of shares or social parties to third parties in the public or private sector, in the country or abroad, in accordance with special legislation.

In order to prepare, organize and coordinate the activity of transferring actions or social parties, the *National Agency for Privatization* was established, subordinated to the government.

Companies were obliged to transmit to the National Agency for Privatization a title of value equal to 30% of the amount of the established social capital within 30 days of their establishment.

In the year 1991 a new normative act was drafted, Law No. 58/1991, respectively, *The law on privatization of commercial companies* [20] which established the legal framework for the transfer of State property to private property of individuals and legal persons.

The management and sale of state-owned shares or social parts was achieved through a public institution with a commercial and financial character, called the *State Property Fund*.

This normative act has regulated, in addition to the emergence of institutional investors, the emergence of five Private Property Funds, as commercial companies on shares.

Private property funds have carried out their activity as stock commercial companies under Law No. 58/1991 and Law No. 31/1990 on companies, only for a period of five years from the date of entry into force of the Law on the privatization of commercial companies.

After the expiry of this term Private Property Funds they were organized, through the effect of the law, into commercial companies on shares of common law, the type of mutual funds.

Persons who, at the time of organization of the PPFs in commercial companies, owned certificates of ownership have become shareholders of these companies, and the property certificates have been transformed into shares in these companies.

By Government Decision No. 552/1992 [21] on the movement of securities, the *National Agency for Securities*, as a structure of the Ministry of Economy and Finance, was established in order to control and certify the validity of issuing and circulation of securities issued by commercial companies and the movement of proprietary certificates issued by Private Property Funds, to certify the negotiating agencies and negotiating agents of those securities, as well as to create an appropriate basis for public, financial information, for the benefit of potential investors (art. 2-3).

At the same time "within The National Bank of Romania it was created the *Centre for designing and implementing Capital markets* – "the embryo" of the future Bucharest Stock Exchange.

It felt the need for an alternative market to that of banking, because the lack of investment

alternatives led to the proliferation of pyramid games, and their toleration by the authorities, followed by their downfall, caused confusion at the level of individual investors" [22].

In August 1993 the Government issued the Ordinance No. 18/1993 on the regulation of non-stock transactions with transferable securities and the organization of mediation institutions [23] regulating the public offer of securities, their intermediation on the primary and secondary market, and the creation of a transparent market for the purpose of mobilizing savings through the allocation of resources by means of transferable securities under appropriate investor protection conditions (article 1).

With the entry into force of Ordinance No. 18/1993, the National Agency for Securities from the structure of the Ministry of Finance was transformed into the Agency of Transferable Securities (art. 5) to which the following tasks were established:

- a) the qualification of financial instruments as transferable securities [24].
- b) the qualification of investments in transferable securities as a public offer [25] or private placement.
- c) the qualification of natural or legal persons as persons involved [26].
- d) the regulation, supervision and enforcement of compliance with the legal provisions or its own regulations and, where appropriate, the granting, suspension and cancellation of licenses and authorizations, and in the application of the sanctions provided for by law (art. 10).

Government Decision No. 788/1993 approving the Regulation on the public offer for sale of securities and the Regulation on the authorization of brokerage companies and securities agents [27] together with the Government Ordinance No. 18/1993 have laid the foundations for a first legal framework necessary for the development of the capital market in Romania.

Through Government Ordinance No. 24/1993 [28] it was regulated the establishment, structure and activities of open investment funds, investment companies, investment management companies and storage companies, and their supervision for stimulating the mobilization of dispersed economies and their allocation to investments on the basis of prudent diversification of portfolio risk (art. 1).

In the year 1994 it was adopted Law No. 52/1994 on securities and stock exchanges [29] as well as Government Decision No. 936/1994 for enforcement of Law No. 52/1994 [30].

These normative acts establish the National Securities Commission, (which according to art. 121 of Law No. 25/1994 replaces the Agency of Securities established by Government Order No. 18/1993) as an autonomous administrative entity with legal personality which exercises its authority throughout the territory of Romania. At the same time, these normative acts regulate the Statute of the National Securities Commission, the creation and functioning of the securities markets with its specific institutions and operations, with the purpose of mobilizing the monetary economies and financial availability by means of transferable securities under appropriate conditions of investor protection (art. 1 and 5).

The mission of the National Securities Commission is:

- a) to promote the smooth functioning of the securities market;
- b) to ensure investor protection against unfair, abusive and fraudulent practices;
- c) to inform the holders of securities and the public on the persons who publicly call for money savings and the values issued by them;
- d) to establish the framework of the activities of intermediaries and agents for securities, the scheme of professional associations established by them and the bodies responsible for ensuring the functioning of the securities market (article 6).

The 11 chapters and 122 Articles of Law No. 52/1994 regulate the conditions governing the establishment, organization and administration of stock exchanges and the conditions for the establishment and organization of storage companies, professional associations with self-regulatory status.

In addition, this normative act regulates the ways of establishment and functioning of real estate markets and the specific institutions and operations.

From the reading of the provisions of article 2 of Law No. 52/1994 it follows the introduction and entry into service of specific terms of novelty, such as: open society [31], real estate brokerage [32], real estate intermediary [33], stock exchange [34], privileged information [35], guaranteed placement [36] etc.

In the year 2002 a suite of four emergency ordinances were adopted with as many laws to approve them. They regarded the capital market, commodity regulated markets and derivative financial instruments, which substantially amended the legislative framework that regulated the capital market until that date.

In the order of their appearance, the followings were concretely adopted: Government Emergency Ordinance No. 25/2002 on the approval of the Statute of the National Securities Commission [37]; Government Emergency Ordinance No. 26/2002 on undertakings for collective investment in immovable property [38]; Government Emergency Ordinance No. 27/2002 on markets regulated by commodities and

derivative financial instruments [40]; Government Emergency Ordinance No. 28/2002 on securities, financial investment services and regulatory markets [41].

In the context of the negotiations on Treaty of Accession to the European Union in the year 2004 Law No. 297/2004 on the capital market was adopted [42].

It is apparent from the explanatory memorandum to the draft law that this normative act has proposed to provide a single regulatory framework for the capital market in accordance with the Community Acquis and encouraging the development of Romanian markets and the strengthening of the institutional capacity of the NSC.

In this respect, art. 1 of Law No. 297/2004 states that the normative act "regulates the establishment and functioning of financial instruments markets, their specific institutions and operations, as well as that of the collective investment undertakings, with the purpose of mobilizing the financial availability by means of investments in financial instruments" and that "NSC, is the competent authority applying the provisions of this law, by exercising the prerogatives established in its Statute".

As stated in art. 291, par. (2) this law translates a number of eight directives of the European Union, and through art. 291, par. (1) were repealed a series of seven normative acts which regulated the capital market by that date, among which the Government's Emergency Order No. 26/2002, concerning undertakings for collective investment in transferable securities; Government emergency Order No. 27/2002 on markets regulated by commodities and derivative financial instruments; Government emergency Order No. 28/2002 on transferable securities, financial investment services and regulated markets.

In view of the dynamics and changes in the field of financial supervision, it appears the need to establish an integrated authority to be responsible for the prudential supervision of capital markets, the insurance sector and the Private pension system.

In this respect, it was adopted the emergency ordinance of the Government no. 93/2012 [43] regulating the establishment, organization and operation of the Financial Supervisory Authority (F.S.A.).

From the preamble of the cited normative act it results that this measure was determined by the finding of malfunctions, in the work carried out in the capital and insurance market sector, which made it necessary to adopt legislative measures which would ensure the efficiency of the sectorial oversight activity carried out outside the central bank's area of competence.

The Financial Supervisory Authority (F.S.A.) was established as an autonomous, specialized administrative authority with an independent, self-financed legal personality, exercising its duties by taking over all the duties and Prerogatives of the National Securities Commission, the Insurance Supervisory Commission and the Supervisory Commission of the Private Pension System (article 1).

The supervision exercised by F.S.A. concerns the activity of:

(a) intermediaries in financial instruments, collective investment undertakings, financial instruments markets and central depository, as well as on market operations and issuers, as provided for in Law no 1/2003. 297/2004 on the capital market, with subsequent amendments and Additions, Government Emergency Ordinance No. 32/2012 on undertakings for collective investment in transferable securities and investment management companies, as well as for the modification and completion of Law No. 297/2004 on the capital market, Government Emergency Ordinance No. 25/2002 on the approval of the Statute of the National Securities Commission, approved with amendments and additions by Law No. 514/2002, with subsequent amendments and additions, Law No. 253/2004 on the definitive nature of settlement in payment systems and in the systems for settling operations with financial instruments, with subsequent amendments and Additions, Government Ordinance No. 9/2004 on certain financial guarantees contracts, approved with amendments and additions by Law No. 222/2004, with subsequent amendments and Additions, Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved with amendments and additions by Law No. 227/2007, with subsequent modifications and additions;

(b) Insurers, reinsurers, insurance and reinsurance intermediaries and other activities in relation to them, in accordance with the provisions of Law No. 136/1995 on insurance and reinsurance in Romania, with subsequent amendments and additions, Law No. 32/2000 on insurance activity and supervision of insurance, with subsequent amendments and additions, Law No. 260/2008 on compulsory insurance of housing against earthquakes, landslides and floods, republished, Government Emergency Ordinance No. 61/2008 on the implementation of the principle of equal treatment for women and men with regard to access to goods and services and the provision of goods and services, approved with amendments by Law No. 62/2009, Government Emergency Ordinance No. 189/2005 for the establishment of measures relating to registered road vehicles, approved with amendments by Law No. 432/2006, Law No. 503/2004 on financial recovery and bankruptcy of insurance companies, with subsequent amendments;

c) Private pension system, according to Law No. 411/2004 on private managed pension funds,

republished, with subsequent amendments and Additions, Government Emergency Ordinance No. 50/2005 on the establishment, organization and functioning of the Supervisory commission of the Private pension system, approved with modifications and additions by Law No. 313/2005, with subsequent amendments and additions, Law No. 204/2006 on voluntary pensions, with subsequent amendments and additions, Law No. 187/2011 on the establishment, organization and functioning of the Fund guaranteeing the rights of the private pension system, Government Emergency Ordinance No. 61/2008 on the implementation of the principle of equal treatment for women and men with regard to access to goods and services and the provision of goods and services, approved with amendments by Law No. 62/2009.

F.S.A. is the competent authority at national level for the application and monitoring of compliance with normative acts of direct applicability issued at European Union level in the fields referred to above (article 2). [44]

Law No. 297/2004 from the date of its entry into force and so far has been successively amended by 12 normative acts, the last one being Law No. 24/2017 on issuers of financial instruments and market operations [45] which, according to the explanatory memorandum, translates into its content the Directive no 2013/50/EU of the European Parliament and of the Council; Directive 2014/57/EU of the European Parliament and of the Council on Criminal penalties for market abuse; [46] Implementation Directive (EU) 2015/2392 of the Commission of 17 December 2015 on Regulation (EU) no 596/2014 of the European Parliament and of the Council; Harmonization of the law with the provisions of regulation (EU) No 596/2014 of the European Parliament and of the Council on Criminal Penalties for market abuse, repealing Directive 2003/6/EC of the European Commission and of the Council and Directives: 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission.

According to article 1 of Law 24/2017 this normative act "establishes the legal framework applicable to market operations having as its object financial instruments admitted or to be admitted to trading on a regulated market or traded on a multilateral system Trading or on a system organized by trading supervised by the Financial Supervisory Authority, hereinafter referred to as F.S.A. and issuers of such financial instruments, public tenders for securities and market abuse operations."

Conclusions

We can appreciate that the beginnings of commodity and stock markets in our country are located in the middle of the 19th century, and that the capital market with the afferent institutions had in their evolution ups and downs caused by the evolution of the relations of domestic and international production, specific to each of the historical periods they have been in.

In the period "Golden age" the regulations contained in Law No. 3/1982 on the participation, with social parts, of the working people of the state economic units at the establishment of the Economic Development Fund [47], induced at that time, the idea that this was a way of participating of the employees in the division of the economic units' profits, would have had a correspondent in a specific joint venture, and the social parts would have had the role of actions corresponding to the concept of "multilateral socialist society developed" in vogue during that period. I appreciate that this law was a timid attempt to apply the rules of market economy to a centralized economy.

After completing this material, it can be concluded that the transition from the centralized economy to the market economy, after the years 90, assumed an ample economic restructuring process in which the emergence and development of the capital market played an important role.

Rebuilding an environment conducive to the development of financial activities has become essential for Romania to align itself with the standards required by European legislation in the field [48].

Along with other authors, I appreciate that "it is undisputed the legislative contribution that Law No. 297/2004 on the capital market brought at the time of its appearance, being a law that endeavored to be adapted to community requirements" [49].

As it can be seen the legislative process regarding the regulation of the capital market is continually adapting to the real needs of the evolution of the capital market in Romania in full accordance with similar regulations in the European Union.

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3] Explanatory Dictionary of the Romanian Language, 1998, p. 134.

[4] Explanatory Dictionary of the Romanian Language, 1998, p. 788.

5] G. Anghelache, Capital Market, features, developments, transactions, Economic Ed, 2004, p. 13.

[6] <http://www.stiucum.com/economie/piata-bursiera/Bursa-in-romania62964.php>;

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[8] <http://brailadealtadata.blogspot.ro/2012/06/istoricul-bursei-de-cereale-bralla-1883.html>;

[9] <http://www.zf.ro/burse-fonduri-mutuale/dupa-15-ani-bursa-de-valori-bucuresti-ramane-un-pion-marginal-in-economie-5444343>

[10] The concept of broker designates that "mediator in the unpalatable business; jobber" according to the Explanatory Dictionary of the Romanian Language, 1998, p. 945; See: <http://www.greferat.com/referate/economie/Istoricul-Bursei-de-Valori-din412.php>

[11] Syndic: Person who was tasked with administering the patrimony of an institution, corporations, societies, etc. Syndic (Stock market) = The leader of the exchange agents or the official mediator, who chairs their union chamber, is part of the management bodies of the stock market and executes the orders of the justice and other State bodies "according to the Explanatory Dictionary of the Romanian language, p. 991.

[12] Published in Official Gazette No. 31 of 9 May 1904.

13] The new draft law was drafted by Professor Virgil Madgearu, Minister of Industry and Commerce, and was ratified by Royal Decree on 13 August 1929, (http://www.acuz.net/html/Bursa_de_marfuri.html)

[14] The law of 1929 defined *money transactions* as "all negotiations that are liquidated on the day they were liquidated or at the latest on the second day of stock market and for which the Parties submitted with the Order of negotiation money or effects".

[15] Published in the Official Gazette No. 104 of 20 November 1982.

[16] Published in the Official Gazette No. 4 of 27 December 1989.

[17] <http://www.stiucum.com/economie/piata-bursiera/Bursa-in-romania62964.php>

[18] Republished in the Official Gazette No. 1006 of 17 November 2004, successively amended, including by art. III of Law No. 152/2015 for the modification and completion of some normative acts in the field of registration in the Trade Register, published in the Official Gazette No. 519 of 13 July 2015. Through article 18 Paragraph 1 of Law No. 76/2012 for the implementation of Law No. 134/2010 on the Code of Civil Procedure (published in the Official Gazette No. 365 of 30 May 2012) the title of the law was amended from "Commercial company law" in "Company law" and the phrase "commercial company" in "company".

[19] Article. 91-109 of Law No. 31/1990, Company Law.

[20] Details about common property are found in: **Corneliu Bîrsan**, *Civil law. The main rights, in regulating the new Civil Code*, Hamangiu Publishing house, Bucharest, 2013, p. 199-249; **Cristian Jora, Ioan Ciochina-Barbu, Cristian Constantin Corbu**, *Civil law. Real rights*, second edition, revised and added, Juridical Universe Publishing house, Bucharest, 2015, p. 163-208.

[21] Published in Official Gazette No. 98 of 8 August 1990, amended successively, including by Law No. 245/2011 (published in Official Gazette No. 865 of 8 December 2011)

[22] Published in Official Gazette No. 169 of 16 August 1991, repealed by Government emergency Order No. 88/1997 (published in Official Gazette No. 381 of 29 December 1997) approved by Law No. 44/1998 (published in Official Gazette No. 88 of 25 February 1998) successively amended, including by Law No. 75/2015 (published in Official Gazette No. 252 of 15 April 2015) for the approval of the Government Emergency Ordinance No. 14/2014.

[23] Published in Official Gazette No. 258 of 15 October 1992, repealed by order of the Government No. 18/1993, published in Official Gazette No. 206 of 26 August 1993, approved by Law No. 83/1994.

[24] **Pepi Mitică** "Capital market and stock exchanges", p. 12, available at: https://www.researchgate.net/...capital_si_burse_de_valori/.../Piete-de-capital-si-burse-de... On the regulation of non-stock transactions with transferable securities and the organization of intermediary institutions, published in Official Gazette No. 206 of 1993. (<http://www.lexex.ro/Ordonan%C5%A3a-18-1993-3666.aspx>)

[25] According to art. 2 lit. a) of the Government Ordinance No 18/1993, *securities* have been defined as "those negotiable instruments issued in material or account form, which confer on their holders patrimonial rights on the issuer, under the law and in their specific issue, according to the present order. Securities may be the shares, bonds, titles and state documents, as well as derivative financial instruments or any other instruments which the securities agency may include in the category of transferable securities".

[26] According to art. 2 lit. i) of the Government Ordinance No. 18/1993, the *public offer* is "any offer made by an issuer, by investors or intermediaries to buy, sell, convert, change or transfer to any other route the rights related to securities, offer made through mass-media or other ways and addressed to the general public or to a specific part of it, provided that the party comprises at least 100 persons, otherwise it constitutes a private placement";

[27] According to art. 2 lit. f) of Government Order No. 18/1993 the *person involved* is "the spouse or any relative up to the third degree or spiritual relative up to the second degree with individuals who, individually or together with other persons involved, hold a control position (...), or any legal person in whom such a natural person, individually or together with other persons involved, has a control position. In the case of legal persons, any person who has a control position directly or indirectly, acting in concert with other natural or legal persons, shall be regarded as a person involved."

[28] Published in Official Gazette No. 38 of 10 February 1994.

[29] On the regulation of the establishment and functioning of open investment funds and investment firms as financial intermediation institutions, published Official Gazette No. 210 of 30 August 1993. (<http://www.legex.ro/Ordonan%C5%A3a-24-25.08.1993-3691.aspx>)

[30] Published in Official Gazette No. 201 of 11 August 1994. (<http://legislatie.just.ro/Public/DetaliiDocument/4181>)

[31] Published in Official Gazette No. 365 of 29 December 1999. ([Www.monitoruljuridic.ro/.../hotarire-nr-936-din-22-decembrie-1994-pentru-aplicarea...](http://www.monitoruljuridic.ro/.../hotarire-nr-936-din-22-decembrie-1994-pentru-aplicarea...))

[32] According to art. 2 lit. k) of Law No. 52/1994, the *Open Companyis*" a commercial company on shares constituted by public subscription or a commercial company on shares issuing securities of which at least one category makes or has been the subject of a public offer regularly promoted"

[33] According to art. 2 lit. l) of Law No. 52/1994, *the intermediation of transferable securities* is "an activity carried out by persons authorized by law, consisting in the purchase and/or sale of securities or rights related thereto or deriving from them, as well as in ancillary or related operations authorized by the National Securities Commission "

[34] According to art. 2 lit. m) of Law No. 52/1994, *the securities intermediary* is "the legal entity authorized by the National Securities Commission to exercise the intermediation of professional securities, as a fact of trade, whether in its own account (dealer) or in the account of Third parties (broker)"

[35] According to art. 2 lit. p) of Law no 52/1994, *the Stock Exchange* is "an institution with a legal personality ensuring the public, through the activity of authorized intermediaries, systems, mechanisms and appropriate procedures for the continuous, orderly, transparent and equitable conduct of Securities transactions and which constitute the official and organized market for the negotiation of securities admitted to the quota, providing the economies invested in them with moral guarantee and financial security through the continuous measurement of liquidity of those securities "

[36] According to art. 2 lit. r) of Law No. 52/1994, *privileged information* is "information of any kind relating to an issuer or any of the securities issued by it, which are not known to the public and are likely to affect the decision of a reasonable investor, the initiated persons being held not to disclose or exploit them directly or indirectly, personally or through intermediaries "

[37] According to art. 2 lit. o) of Law No. 52/1994 *guaranteed placement* is the contract concluded with an authorized legal intermediary, whereby he undertakes to subscribe or purchase a quantity of financial titles in order to place them on the securities market, with the obligation to take over on his own all financial titles which have not been placed under the terms of the contract".

[38] Published in Official Gazette No. 226 of 4 April 2002, approved by Law No. 514/2002, published in Official Gazette No. 539 of 24 July 2002.

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[40] Published in Official Gazette No. 232 of 8 April 2002 approved by Law No. 512/2002, published in Official Gazette No. 576 of 5 August 2002, repealed.

[41] Published in Official Gazette No. 238 of 9 April 2002 approved by Law No. 525/2002, published in Official Gazette No. 576 of 5 August 2002, repealed.

[42] Published in Official Gazette No. 571 of 29 June 2004, amended successively, including by Law No. 24/2017 on issuers of financial instruments and market operations published in Official Gazette no. 213 of 29 March 2017

[43] Published in Official Gazette No. 874 of 21 December 2012 (approved by Law No. 113/2013, published in Official Gazette No. 234 of 23 April 2013), amended and supplemented thereafter.

[44]

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[49] https://www.juridice.ro/.../academia-de-politie-alexandru-ioan-cuza-sustinere-teza-de-doctoratetigănoia_adrian_cătălin, p.54