

AGREEMENT
BETWEEN THE COMMISSION BANCAIRE
AND
THE NATIONAL BANK OF ROMANIA

**REGARDING MUTUAL CO-OPERATION AND EXCHANGE OF INFORMATION
IN THE PERFORMANCE OF BANKING AND PRUDENTIAL SUPERVISION**

1. In view of the fact that a number of banks and other financial organisations incorporated in Romania or France have operations in both jurisdictions, the *Commission bancaire* (hereafter the “CB”) and the National Bank of Romania (hereafter the “NBR”) hereby agree to the provisions set out in this agreement in order to establish an arrangement for the collection and sharing of information, in particular through on site inspections, the aim of which is to facilitate the performance of their tasks, meet the highest international standards for effective banking supervision and promote the safe and sound functioning of banks and other financial organisations in their jurisdictions.

2. The Basel Committee on Banking Supervision has issued Core Principles for Effective Banking Supervision (hereafter the “Core Principles”), in particular Core Principles 23, 24 and 25 regarding supervision of cross-border establishments.

3. The overall aim of the present agreement is to improve the strength of the financial systems of the Authorities’ jurisdictions in accordance with the above mentioned Core Principles, thereby helping to maintain stability and confidence in the domestic and international financial systems and reducing any risk of loss to depositors and creditors.

Article I. - Legislation and competent authorities

1. The relevant French Law for the purposes of this agreement is the *Code monétaire et financier* (Code monétaire et financier, annexe à l’ordonnance n°2000-1223 du 14 décembre 2000, hereafter referred to as the “Monetary and Financial Code”), as amended, in particular Articles L.613-13 and seq.

2. The relevant Romanian law for the purposes of this agreement is *Law No 312/2004 on the Statute of the National Bank of Romania* (hereafter referred to as the “ NBR Act ”), and *Law 58/1998 on the banking activity* with the subsequent amendments (hereafter referred to as the “ Banking Act ”).

3. The CB has been vested by the Monetary and Financial Code with the task of supervising credit institutions, investments firms (except portfolio management firms), members of regulated markets, participants to clearing houses and some other financial undertakings located within the jurisdiction of the French Republic (hereafter “France”), including French overseas territories. In France, the *Comité des établissements de crédit et des entreprises d’investissement* (CECEI, Committee for Credit Institutions & Investment Firms) makes individual decisions and grants authorisations and exemptions, except for those cases which come to the competence of the CB. The CECEI rules in particular on applications for licenses by credit institutions and investments firms and on equity participations in French credit institutions or investment firms. With respect to matters falling within the scope of its competences, the CECEI will get directly in touch with the NBR.

4. According to the Romanian Banking legislation the NBR has been vested with the task of regulating, licensing, and prudential supervising of credit institutions allowed to be established and to operate as banks, credit co-operative organisations, electronic money institutions and real estates savings houses. The NBR has also been vested with the task of regulating, licensing, and supervising the payment systems in Romania, including their administrators in order to ensure the functioning of the payment systems in accordance with the international standards in the field.

Article II – Definitions

For the purposes of this Agreement:

1. “Authority” means the CB or the NBR.
2. “laws” mean those set out in Article I, paragraphs 1 and 2.
3. “supervised institution” means an institution subject to the supervision or control of the CB.
4. “authorised entity” means an institution subject to the supervision or control of the NBR.

5. “branch” means an organisational unit of a supervised institution’s (authorised entity’s) head office incorporated in France (Romania).
6. “subsidiary” means an authorised entity (supervised institution) incorporated in Romania (France) which is controlled by any supervised institution (authorised entity) incorporated in France (Romania).
7. “Affiliated company” means any legal entity that belongs to the same group as a supervised institution or authorised entity.
8. “cross-border establishment” means an establishment of a branch or a subsidiary of a supervised institution (authorised entity) incorporated in France (Romania) which has been granted an authorisation in Romania (France).
9. “Home Authority” means the Authority located in France (Romania), responsible for the supervision on a consolidated basis of a supervised institution (an authorised entity).
10. “Host Authority” means the Authority located in Romania (France) responsible for the supervision of a branch, subsidiary, representative office or affiliated company.

Article III. - Mutual Assistance Concerning Sharing of Supervisory Information between the Authorities

1. The CB and the NBR hereby recognise that closer co-operation during the authorisation process of a cross-border establishment as well as sharing of information on an ongoing basis would be mutually advantageous for the Authorities for effective consolidated supervision of supervised institutions and authorised entities.
2. A request for information pursuant to this article shall be made in writing and addressed to the relevant contact person (Article VI, paragraph 12) of the disclosing Authority.

A request shall specify the following:

- (a) the information sought by the requesting Authority;
- (b) a general description of the matter which is the subject of the request and the purpose for which the information is sought; and

(c) the desired time period for reply and, where appropriate, the urgency thereof.

3. The Authority receiving a request shall immediately acknowledge receipt, by mail, fax or e-mail and, to the extent possible, specify the considered time period to provide a written response.

Sharing of information during the process of authorisation

4. Regarding the process of authorisation of a cross-border establishment, upon request from the Host Authority, the Home Authority undertakes to notify the Host Authority:

(a) of any details concerning any establishment of the supervised institution or authorised entity located within the jurisdiction of the Home Authority, in particular regarding its compliance with laws, degree of administrative control and ability to manage a cross-border establishment in an orderly manner; and

(b) about any aspect of its laws in response to any requests for information.

5. The Authorities agree that, without prejudice to Article I.3, when a supervised institution or authorised entity within the jurisdiction of the Home Authority proposes to set up a cross-border establishment, the Host Authority shall seek the opinion of the Home Authority (or obtain a statement of “no-objection”) before the authorisation is granted.

Sharing of information for consolidated supervision on an ongoing basis

6. As a general rule, any relevant information should be shared in support of the objective to facilitate and meet the requirements for effective consolidated supervision of supervised institutions and authorised entities operating in both jurisdictions.

7. In accordance with paragraph 2 of this Article, in the event of:

(a) a written request by the CB as Home Authority which is responsible for carrying out the consolidated supervision of any particular supervised institution, the NBR as Host Authority shall provide all relevant information regarding that supervised institution, including any office, branch, subsidiary or affiliated company located within the jurisdiction of the Host Authority ;

- (b) a written request by the NBR as Home Authority which is responsible for carrying out the consolidated supervision of any particular authorised entity, the CB as Host Authority shall provide all relevant information regarding that authorised entity, including any office, branch, subsidiary or affiliated company located within the jurisdiction of the Host Authority.

8. In considering such a request the Host Authority should take into account at all times that the Home Authority requires two principal types of information: quantitative and qualitative.

9. The Home Authority may notably request quantitative information including :

- (a) any accounting or financial data relevant to the supervised institution or authorised entity;
- (b) any details concerning capital adequacy ratios, large risks or lending limits (including intra-group exposures), funding and deposit concentrations.

10. The Home Authority may also require information on qualitative aspects of the business being undertaken by the branch, subsidiary or affiliate. The Host Authority may, in this regard provide information about the following :

- (a) any details as to the capability / qualification / integrity of the directors and senior management ;
- (b) the existence of risk control methods within the supervised institution or authorised entity on a global / worldwide basis as well as the ability to manage the cross-border establishment and effective local oversight of foreign operations ;
- (c) the ability of the supervised institution or authorised entity to carry out checks including internal audit procedures and compliance with internal controls; the quality of assets and levels of concentration; the monitoring of the liquidity of the institution; and if applicable, specific local oversight when the foreign activities of the institution have a higher risk profile or when they differ from those conducted in the home country ;
- (d) prevention of money laundering and struggle against terrorism financing.

11. Whenever necessary, the CB (NBR) will transmit to the NBR (CB) the information required for the calculation of insurance premiums for the Romanian Deposit Guarantee Fund in the Banking System (French Deposit Guarantee Fund).

Sharing of additional information at the initiative of either the Home or Host Authority

12. Without prejudice to the procedures laid down in the paragraphs above, each Authority will make its best effort to notify and consult with the other Authority if it becomes aware of any information which, in its judgement, may constitute a material supervisory concern that could materially and adversely affect, from the prudential viewpoint, the situation of a supervised institution or authorised entity subject to supervision by the other Authority.

13. For the purpose of the paragraph 12 above, the CB shall provide the NBR with any relevant information regarding any material supervisory concern it may have:

- (a) as Host Authority in respect of any of the branches or subsidiaries in France of a Romanian authorised entity; and
- (b) as Home Authority in respect of any French supervised institution having a subsidiary or branch in Romania.

14. For the purpose of the paragraph 12 above, the NBR shall provide the CB with any relevant information regarding any material supervisory concern it may have:

- (a) as Host Authority in respect of any of the branches or subsidiaries in Romania of a French supervised institution; and
- (b) as Home Authority in respect of any Romanian authorised entity having a subsidiary or branch in France.

15. When considering the obligation to provide information concerning supervised institutions or authorised entities in accordance with the paragraphs above, the Host Authority will take into account all relevant factors, including:

- (a) whether the activities of the branch or subsidiary are conducted in a manner which is safe and sound;
- (b) whether the branch or subsidiary has complied with the relevant laws; any sanctions taken by the Host Authority (not by other authorities), whether or not such sanctions are being subject to an appeal (not merely evidence of a material violation of the law); enforcement of claims against the branch or subsidiary (e.g.

for a default in payment of a periodic contribution to deposit guarantee schemes or similar mechanisms protecting depositors or investors).

16. Before consequential action is taken by one Authority on the sole basis of information received from the other Authority, the former will endeavour to consult the latter.

Urgency or crisis situations

17. Each authority recognises the unique importance of full and open co-operation in the event of a serious supervisory concern that might lead to a crisis situation.

18. In addition to the procedures laid down in the paragraphs above, in the event that there exist a serious supervisory concern in the judgement of the Authority concerned, the CB will endeavour to notify the NBR and the NBR will endeavour to notify the CB before appropriate action is taken regarding the serious supervisory concern.

19. When there is a need for expedited action, requests for information under this Article may be initiated in any form, including orally, but shall be confirmed subsequently in writing. The Authorities will endeavour to provide information as quickly as possible in such circumstances.

Article IV.- On-site Inspections in the Host Country

1. The NBR (CB) in its capacity as Host Authority shall allow the CB (NBR) to carry out an on-site inspection concerning any branch or subsidiary of a supervised institution (authorised entity) within its jurisdiction, subject to the fulfilment of the following formalities:

(a) notification is provided to the relevant contact person at the NBR (CB) by the Home Authority at least two months before the envisaged date of the on-site inspection, specifically regarding its purpose, its expected duration, the institution(s) to be inspected and details of the persons performing the inspection;

(b) the on-site inspection is not rejected under the conditions set out in Article VI, paragraph 5 below.

2. Provided a request for an on-site inspection in accordance with the provisions above is not rejected, the Home Authority may carry out the inspection in Romania (France). The Host Supervisor has the right to have representatives accompany any such on-site inspection. The *Secrétaire Général* of the CB and the NBR shall appoint one or more representatives to accompany the Home Authority's representatives in their inspection.

3. In the course of such an inspection, persons taking part in the supervision or management of a supervised institution or authorised entity, or employed by such an institution or entity, should comply with the requests of the Home Authority's representatives and may not assert a duty of confidentiality or professional secrecy as grounds for nondisclosure.

4. The Host Authority shall endeavour to exercise its statutory powers to ensure compliance with the requests for information issued by the Home Authority in the carrying out of inspections pursuant to this agreement.

5. The results of the inspection shall be submitted to the Host Authority for information. The information on the results of the inspection may provide a basis for further actions, including disciplinary proceedings, undertaken by the Authority which initiated the request for the on-site inspection. This shall be without prejudice to the right of the NBR (CB) to initiate a separate action, on the basis of the report of inspection, for an alleged infringement of Romanian (French) laws.

6. Only the NBR may order sanctions with regard to a branch or a subsidiary of a supervised institution in Romania. Only the CB may order sanctions with regard to a branch or a subsidiary of a authorised entity in France.

Article V.- Confidentiality of the Information Shared Between the Authorities / Professional Secrecy

1. Reports of examinations shall remain the property of the Authority providing such documents.

2. The Authorities consider that any information obtained in accordance with the provisions of this agreement should remain confidential, except for the purposes determined in the paragraph below. In this regard it is recognised that members and employees of the Authorities are bound by an obligation to hold confidential the information obtained in the course of their duties. No provision of this agreement shall give rise to the right on the part of any person, entity or governmental authority other than the Authorities, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this agreement.

3. The Authority which makes a request may use the information furnished pursuant to this agreement solely:

- (a) for the purposes stated in the request, including ensuring compliance with, or enforcement of, any laws and regulations specified in such a request; or
- (b) for purposes within the general framework of the use stated in the request, including conducting a civil or administrative enforcement proceeding, assisting in a proceeding whose purpose is to permit a subsequent criminal prosecution, or conducting any investigation related to any general charge applicable to the violation of the provision stated in the request.

4. In the event of a request issued by a competent official person, either in the course of a criminal proceeding or of a court-ordered winding-up of a supervised institution or authorised entity, or pursuant to an order issued by a court in the course of proceedings related to the discharge of the carrying out by an Authority of its legal tasks, for disclosure by an Authority of information that originates from the other Authority, the Authority to which the request has been addressed shall notify the Authority that originated the information of such a request and shall seek, to the extent permitted by the laws of the Authority to which the request has been addressed, prior approval before disclosing this information.

If an Authority is forced to testify in a parliamentary investigation to disclose confidential information received from the other Authority, it shall consult with the later Authority before disclosing such confidential information. The Authority forced to testify shall advise the requesting body if the Authority that originated the information did not consent to sharing the information and that a forced disclosure could adversely affect the future transmission of confidential information by foreign supervisory authorities. It shall request that the information be kept confidential by the requesting body.

5. In any other event of a request for disclosure by an Authority of information that originates from the other Authority, in particular when the information relates to an individual client of a supervised institution or authorised entity, the Authority to which the request has been addressed shall seek and receive, to the extent permitted by the laws of the Authority that originated the information, prior approval before disclosing this information.

6. In the event of a breach of the conditions set out in Article V paragraph 4 above by an Authority, the other Authority may suspend the execution of co-operation under this agreement with immediate effect. Such suspension shall affect neither the obligation of confidentiality nor the content of Article VI paragraph 10 of this agreement.

7. Each Authority shall keep confidential requests made within the framework of this agreement, the content of such requests, and any other matters arising during the operation of this agreement, including consultation between the Authorities.

Article VI. - General Provisions

1. Nothing in this agreement shall affect the competence of the NBR under Romanian law and supervisory practice or supersede, alter or create any arrangement between the NBR and other entities with respect to the sharing of information.

Nothing in this agreement shall affect the competence of the CB under French or European Community law and supervisory practices or supersede, alter or create any arrangement between the CB and other entities with respect to the sharing of information.

Mutual information on laws and regulations

2. The Authorities have exchanged documents intended to inform each other of the laws (including, where applicable, regulations and procedures) governing the supervised institutions (authorised entities) in their respective jurisdictions.

3. The Authorities affirm that they have informed each other of the laws, regulations and procedures governing the confidentiality of information to be shared pursuant to this accord.

4. The Authorities acknowledge that this agreement has been executed in accordance with the applicable laws and regulations in France and in Romania and is based on the representations made and supporting materials exchanged by the Authorities.

Impossibility of providing information or assistance

5. The Authorities understand that the provision of information or assistance to an Authority must be refused by the other Authority when complying with the request is likely to result in a prejudice to sovereignty, security, essential economic interests or public policy, or where criminal proceedings have been initiated on the same facts against the same persons, or where a final decision to impose a sanction has been given against such persons for the same facts. Nothing in this agreement shall affect this obligation.

Implementation of the agreement

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6. This Agreement shall enter into force on the day of its signing by the Authorities.
7. The provisions of this agreement may be amended by the mutual written agreement of the Authorities.
8. The General Secretaries of the CB and the NBR may issue practical arrangements regarding the method of co-operation between the Authorities.
9. The Authorities shall consult each other in the event of any changes in their respective laws or in the event of any other difficulty which may make it necessary to amend or interpret this agreement. In case of any difficulty related to the implementation of this agreement, the Undersigned shall try to reach a common interpretation by reference to its finality of facilitating cooperation and to the preparatory work.
10. The agreement will remain in effect for an indefinite period from the date entered below. Should an Authority consider that it can no longer co-operate under the provisions of this agreement, it will give notification to the other Authority as soon as possible. In any case, the duty of confidentiality referred to in Article V of this agreement shall not terminate with respect to any information disclosed.
11. Representatives of the CB and the NBR will meet regularly to discuss supervisory developments concerning supervised institutions and/or authorised entities maintaining establishments in both Romania and France. Each party will make every effort to encourage continuous and informal contact between their respective staff, particularly to provide the other Authority with information on legislative or regulatory provisions relevant to supervised institutions and authorised entities. The NBR and the CB intend to promote their cooperation by visits for informational purposes and by short exchange of staff for practical internships.
12. The NBR and the CB shall exchange lists of the contact persons authorised to request and provide information on behalf of the NBR and on behalf of the CB pursuant to this agreement. The list shall contain the following contact data: the first name and surname, position (function), e-mail address and telephone and fax numbers of the authorised persons. On behalf of the NBR and CB, persons other than those specified in the manner stated in the preceding clauses may request or provide information of a general nature or information that has been officially disclosed. The NBR and the CB shall inform each other of any modifications to the list of authorised persons without undue delay.

In witness whereof, the undersigned, being duly authorised, have signed this agreement.

Done at Bucharest, in 6 exemplars, this 2 of September 2005, in French, Romanian and English.

For the **National Bank of Romania**

Mugur Constantin Isărescu
Governor of the National Bank of Romania

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For the **Commission Bancaire**

Christian Noyer
Governor of the Bank of France,
President of the Commission bancaire

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